United Nations A/C.6/59/SR.10

General Assembly
Fifty-ninth session

Official Records

Distr.: General
31 January 2005
English
Original: French

Sixth Committee

Summary record of the 10th meeting
Held at Headquarters, New York, on Wednesday, 20 October 2004, at 3 p.m.

Chairman: Mr. Simon (Vice-Chairman) ..... (Hungary)

Contents

Agenda item 148: Measures to eliminate international terrorism (*continued*)

Agenda item 149: Scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of publication* to the Chief of the Official Records Editing Section, room DC2-750, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

04-56281 (E)

The meeting was called to order at 3.10 p.m.

Agenda item 148: Measures to eliminate international terrorism (*continued*) (A/59/37, A/59/210, A/59/83-S/2004/387, A/59/124-S/2004/532, A/59/337-S/2004/721, A/59/368-S/2004/747, A/59/380-S/2004/757, A/59/383-S/2004/758, A/59/371 and A/C.6/59/L.10)

1. **Mr. Al Shubaili** (Saudi Arabia) said that the worrying upsurge of terrorism affected all countries and societies without distinction and that international cooperation must be stepped up in order to deal with that scourge and its paymasters. His country condemned all forms of terrorism, gave its full backing to the international community's efforts to eradicate that plague, and completely endorsed the Security Council's resolutions on the subject.

2. His Government had adopted measures to prevent the use for terrorist purposes of funds collected by charities; they included the setting up of a regulatory body to supervise all such associations. His country had been one of the first to sign the Arab Convention for the Suppression of Terrorism, the Convention on Combating International Terrorism of the Organization of the Islamic Conference and the Convention recently adopted by the Gulf Cooperation Council, and it had acceded to several international treaties and conventions against terrorism. The measures taken by the authorities in Riyadh at the national, regional and international levels had begun to bear fruit.

3. A whole society or culture must not be condemned for crimes committed by a gang of criminals. The struggle against the dangerous international scourge of terrorism was a collective duty. In that connection, his Government was preparing to host in Riyadh, on 5 February 2005, an international conference on terrorism, whose six main themes would be: the roots of terrorism, terrorist culture and ideas, links between terrorism and drugs, lessons to be learned from countries' experiences in their battle against that evil, links between terrorism and money-laundering and, lastly, terrorist organizations.

4. His Government asked the international community to intervene in order to end the genocide against the Palestinians and the spiral of violent State terrorism in Gaza. Two little girls had died in an attack on a school run by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), and he echoed the words of the Commissioner-General of UNRWA, Mr. Hansen, who had denounced the daily violation of children's right to life in the occupied territories.

5. **Mr. Ajonye** (Nigeria) said that his Government unequivocally condemned acts of terrorism in all their forms and manifestations, and remained committed to all efforts to eliminate that menace to national, regional and international peace and security. The recent tragedy in Beslan had attested to the fact that terrorism was no respecter of any life, religion or frontier. He was pleased that the efforts to gather and exchange information on the counter-terrorist activities of Governments and other actors had started to yield results: some 20 States, five entities of the United Nations system and two intergovernmental organizations had filed reports with the relevant United Nations committees. The team of experts appointed to monitor compliance with Security Council resolution 1267 (1999) had visited a number of countries in sub-Saharan Africa to gather and exchange information and to benefit from each country's experiences.

6. Nigeria also appreciated the workshops and training courses organized by various United Nations bodies and other organizations, including the International Civil Aviation Organization (ICAO), the International Maritime Organization (IMO) and the International Atomic Energy Agency (IAEA). ICAO had already produced eight aviation security training packages which were being sold and distributed in the international civil aviation community. His Government greatly hoped that the Governments of developing countries and the relevant civil society organizations would have unfettered access to those training materials. He welcomed ongoing efforts to publish the second volume of the United Nations Legislative Series containing a compilation of national laws and regulations on the prevention and suppression of international terrorism in all its forms and manifestations.

7. His delegation still held that a comprehensive convention on combating international terrorism, including nuclear terrorism, was a necessary instrument to protect the individual and collective right to life. It was therefore concerned by the lack of consensus on articles 18 and 2 bis of the draft comprehensive convention on international terrorism and on article 4 of the draft international convention for the suppression of acts of nuclear terrorism, for the

disagreements which were delaying the completion of those two instruments might be interpreted by the perpetrators of terrorist acts as a sign of general indecision. His delegation, therefore, called on Member States to demonstrate greater flexibility and a firm political will to finalize those instruments.

8. His Government had taken major steps to combat terrorism by implementing the necessary instruments to freeze without delay funds and other financial assets or economic resources of persons who committed or attempted to commit terrorist acts, or who tried to participate in or facilitate the commission of terrorist acts, and of companies owned or controlled directly or indirectly by such persons. It had also introduced measures to monitor and prevent money-laundering. In the same vein, it would continue to deny safe haven to those who financed, planned, supported or committed terrorist acts.

9. No matter how unjustifiable terrorist acts were, the international community must deal with the root causes of the evil. The escalation of terrorism in different regions of the world had been ascribed, among other things, to intolerance or extremism, deep-seated bitterness and the crazed blood-thirstiness of the perpetrators. There was also a common belief that it was necessary to tackle the root causes and to wrestle with some underlying problems, such as the lack of good governance, poverty, economic dominance, religious intolerance, the incomplete implementation of disarmament measures, the proliferation of small arms and light weapons, and illegal arms trafficking across national borders.

10. **Mr. Navoti** (Fiji) welcomed the fact that the General Assembly and the Security Council were acting in unison to address the threat of terrorism. His Government noted with satisfaction the adoption of Security Council resolution 1566 (2004) and in particular the setting up of a working group to consider and submit recommendations to the Council on practical measures to be imposed upon those involved in or associated with terrorist activities, other than those designated by the Al-Qaida/Taliban sanctions committee. Fiji also supported the establishment of an international fund to compensate victims of terrorist acts as envisaged in the said resolution.

11. His delegation commended the work of the Ad Hoc Committee on the draft comprehensive convention on international terrorism and the draft international convention for the suppression of acts of nuclear terrorism. While the lack of consensus on some articles of the two texts was regrettable, it had to be acknowledged that the outstanding issues were complex and had political dimensions. The adoption of both conventions by the General Assembly would reaffirm the primacy of the rule of law in international relations and ensure respect for human dignity and human rights.

12. His delegation, like others, also considered that it was very important to address the grievances caused by despair, resentment, ignorance and poverty. To eliminate the root causes of terrorism, the international community must ensure that international relations were based on sovereign equality, multilateralism, justice and sustainable development.

13. **Mr. Dhakal** (Nepal) said that terrorism seriously threatened international peace and security, impeded the economic and social development of all States and jeopardized prosperity, stability and order. The brutal killing of 12 Nepalese who had gone to Iraq simply to earn a living had shocked the conscience of humanity. Concerted national and international action was therefore required to preserve the foundations of peace, justice and democracy.

14. His Government condemned terrorist acts in all their forms and manifestations as crimes for which there was never any justification. It was determined to combat terrorism at the national level and to work with other States at the regional and international levels to that end. His country had suffered grievously in recent years from the terrorist acts of self-proclaimed Maoist groups. It therefore supported the work of the Security Council's Counter-Terrorism Committee and its Executive Directorate recently established to monitor the implementation of Council resolution 1373 (2001). It also backed the work of the Al-Qaida/Taliban sanctions committee established pursuant to Council resolution 1267 (1999). His Government had adopted the necessary measures to give effect to those resolutions and had so informed the respective committees.

15. The 1994 Declaration on Measures to Eliminate International Terrorism had led to the establishment of the Ad Hoc Committee under General Assembly resolution 51/210. His delegation supported the work of that Committee and appreciated the efforts that had been made by its Chairman and two coordinators to

resolve outstanding issues related to the draft comprehensive convention on international terrorism and the draft international convention for the suppression of acts of nuclear terrorism. The comprehensive convention would complement the 12 existing sectoral anti-terrorist conventions.

16. The Security Council's adoption of resolution 1566 (2004) had lent fresh impetus to the battle against terrorism in emergency situations. That resolution might help delegations to answer questions relating to the definition of terrorism and the comprehensive convention's scope.

17. It was encouraging that Member States seemed to have redoubled their efforts to find an acceptable solution to the outstanding issues raised by articles 2, 2 bis and 18 of the draft comprehensive convention. His Government urged them to demonstrate the political will and determination needed for the Ad Hoc Committee to complete its work rapidly. In that connection, it supported the convening of a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations.

18. Regional cooperation complemented global action to counter-terrorism. His Government was a party to the Regional Convention on Suppression of Terrorism of the South Asian Association for Regional Cooperation (SAARC), to which six other members of the Association were also parties. The Association's twelfth summit had adopted an Additional Protocol to the Regional Convention in January 2004. Those regional instruments would facilitate the implementation of Security Council resolution 1373 (2001) in the Association's member States.

19. **Mr. Abebe** (Ethiopia) said that his Government unequivocally condemned all terrorist acts, regardless of their motivation, form or manifestation; the United Nations must continue to play a central role in fighting that global menace in accordance with the principles and purposes of the Charter and the norms of international law, including human rights law. As a State party to 7 of the 12 counter-terrorism conventions, Ethiopia would continue to play its part fully in combating international terrorism and to faithfully implement the provisions of those conventions and of the Security Council resolutions, including resolution 1373 (2001). At the regional level, it would continue to participate in establishing legal standards and institutions to fight terrorism within the framework of the African Union (AU) and the Inter-Governmental Authority on Development (IGAD).

20. The ongoing negotiations on the two draft conventions before the Committee could provide a wider legal basis for a more effective global response to terrorism. Ethiopia supported an early adoption of the two draft conventions and believed that considering them separately would speed up their finalization. It called on all parties concerned to show greater political will and flexibility to overcome the deadlock which the Committee had been in for the past two years on three remaining articles of the draft conventions. In that regard, Ethiopia supported the spirit and the letter of Security Council resolution 1566 (2004) calling on the Committee to adopt both draft conventions by consensus, and also supported the continuation of the work of the ad hoc committee within the framework of the Working Group of the Sixth Committee towards that end.

21. **Mr. Mezeme-Mba** (Gabon) said that his delegation categorically condemned terrorism and called on Member States to reach speedy agreement on the two draft conventions under consideration. He welcomed the action taken by the Security Council to combat terrorism, particularly the work done by the Counter-Terrorism Committee and the recent adoption of resolution 1566 (2004), which set out new measures for strengthening counter-terrorism.

22. He underscored the importance of regional and subregional cooperation in that area, welcoming in particular the initiatives taken by the African Union, which had come out with an important statement on the subject at its meeting in Algiers and which had recently set up the African Centre for the Study and Research on Terrorism. The Central African Economic and Monetary Community (CEMAC), which had recently set up the Action Group against Money-Laundering in Central Africa (GABAC), was playing an important role in combating the financing of terrorism. On 4 April 2003, GABAC had adopted a regulation for deterring and suppressing money-laundering and the financing of terrorism in Central Africa, which served as an institutional and legal framework for countries in that subregion. Also, on 27 May 2004, CEMAC member States had decided to create a specialized training centre for criminal investigation and had concluded an agreement on fighting terrorism in

Central Africa. Those initiatives were encouraging and should lead to positive outcomes.

23. **Ms. Matekane** (Lesotho) said that, in the light of the continual emergence of acts of terror worldwide, the international community should deepen its commitment and intensify its efforts to combat terrorism. Oftentimes, it could only watch helplessly as atrocities were committed. Most acts of terror, if not all, were committed in the cause of legitimate grievances, perceivable or otherwise. No one could dispute the frustrations and despair engendered by foreign occupation and domination, by dictatorship and racist regimes, but neither could anyone deny the anguish and guilt felt at the summary executions of innocents. For those reasons, particular attention should be focused on those grievances and on their origin.

24. Among the adversities that had befallen Africa, such as extreme poverty and disease which threatened the existence of some populations, including in Lesotho, those terrorist acts imposed a greater and unnecessary burden. Without being a panacea, a comprehensive international legal framework would seal the existing gaps in international law and become a coordination tool. It was imperative, therefore, to make progress in the formulation of the conventions relating to terrorism. In that regard, Lesotho welcomed the adoption by the Security Council of resolution 1566 (2004) which would impart momentum to the work of the Sixth Committee.

25. A more sincere and consistent global response to terrorist acts was required. States continued to hold conflicting perspectives regarding terrorist acts, and self-serving political interests seriously impeded the formulation of a universal guarantee against terrorism, while also serving to validate the deeds of the culprits. Her Government had always stood firmly against the harbouring of terrorists and the financing of terrorist operations. It was developing a comprehensive policy and legislation to address the financing of terrorism within the context of its draft money-laundering and proceeds of crime bill. Lesotho also encouraged the convening of an international conference on terrorism under the auspices of the United Nations.

26. **Mr. Ri** (Democratic People's Republic of Korea) said that while counter-terrorism should serve to safeguard the sovereignty of States and their right to development, ensure a free and safe life for people and promote global peace and stability, it should not be misused for unilateral political purposes. The current counter-terrorism policy — unilateral, exclusive and unjustifiable — had brought about the vicious cycle of terrorism. The rampancy of terrorism all over the world had resulted from an inhumane foreign policy which oppressed other nations, violated State sovereignty and created social inequality.

27. Elimination of the root causes of terrorism required the establishment of international relations based on the sovereign equality of States, multilateralism and justice, the eradication of exploitation, oppression and social inequality and the promotion of human-centred sustainable development. Unless the unilateral and high-handed acts newly emerging in international relations were eliminated, the establishment of international relations based on sovereign equality could never be realized, nor could the escalation of terrorism be prevented; indeed, the recurrence of bloodshed, as was happening currently in Iraq, would be inescapable.

28. No Member State should tolerate the imposition of unilateral sanctions and the use of armed force against sovereign States behind the screen of counter-terrorism. The Democratic People's Republic of Korea had always opposed terrorism in all its forms and manifestations. It had taken a number of legislative and administrative measures to combat international terrorism and was cooperating actively with the United Nations in that endeavour by submitting regular reports that detailed its counter-terrorism activities.

29. **Mr. Dolatyar** (Islamic Republic of Iran) said that his country had played an active role in combating terrorism. Because of the insecurity in the region resulting from the increase in terrorist activities, Iran had taken several measures to enhance security in its border areas by tightening border and visa controls, deporting thousands of illegal aliens, and arresting and extraditing hundreds of suspects, particularly members of Al-Qaida. Nevertheless, under the protection of certain Powers, terrorist groups continued to operate in several neighbouring countries, and his Government was of the view that the war on terror should be comprehensive and non-selective.

30. The counter-terrorism effort required a global strategy, one based on cooperation under the provisions of the Charter of the United Nations and the principles of international law, including the third Geneva

Convention. Dropping bombs into heavily populated areas, for example, could only create fresh cycles of violence. Iran shared the view of the Secretary-General that in joining forces against terrorism, it was imperative that freedom, human rights and the rule of law be upheld and protected. The terrorism of non-State actors and the unilateral force by certain States were two sides of a common problem which were mutually reinforcing and which contributed to global insecurity and lawlessness. For that reason, the international community must scrupulously comply with the principles of international humanitarian law and human rights.

31. The United Nations had an essential role to play in codifying a set of rules that would enable Member States to fight terrorism effectively. While the General Assembly had already adopted several counter-terrorism instruments, other organs, such as the Security Council, had a tendency to encroach on its powers and mandate. Although a step towards the strengthening of counter-terrorism measures, Council resolution 1566 (2004) was, in his view, a case in point. It was clear that the Council's approach to curbing terrorism had failed to attain its substantive goals, and for that reason the General Assembly should adopt a collective and inclusive approach based on cooperation among all Member States with a view to adopting effective measures. It was to be hoped that consensus would speedily emerge on the two draft conventions on terrorism. Iran, along with other members of the Organization of the Islamic Conference (OIC), would cooperate proactively to ensure the speedy adoption of those two important documents.

32. **Mr. Chaabani** (Tunisia) reiterated his delegation's strong condemnation of terrorist acts, methods and practices in all their forms and manifestations at a time when the world had seen an alarming resurgence of international terrorism. In his message to the General Assembly during the current session, the President of Tunisia, Mr. Ben Ali, had emphasized that the increasing danger of terrorism required greater international coordination against the terrorist scourge in order to ward off its dangers by addressing its root causes, finding just solutions to a number of outstanding international problems and curbing poverty, exclusion and marginalization throughout the world.

33. Owing to its universality, the United Nations provided the appropriate setting for a global approach to combating terrorism. In particular, the General Assembly and the Security Council should coordinate their activities, in accordance with their respective mandates, in order to avoid duplication. When it had been a member of the Council, Tunisia had participated actively in the drafting of Security Council resolution 1373 (2001) establishing the Counter-Terrorism Committee and, in accordance with the requirements imposed by the resolution, had submitted several reports in which it described the measures taken to combat terrorism, whether through bilateral agreements, through its accession to all the relevant international and regional treaties or through its ever closer cooperation with other States on legal and security matters. The reports had also contained information about Tunisia's adoption of a law concerning the establishment of appropriate mechanisms and structures to ensure the monitoring and suppression of the financing of terrorism.

34. It was regrettable to note that most of the obligations under Security Council resolution 1373 (2001) were not fully honoured by some of the States concerned. The recent adoption of Security Council resolution 1566 (2004), however, offered some hope in that regard. Despite a number of important new developments, there were still some loopholes in international law that terrorists could exploit and that should be closed as soon as possible. His delegation therefore continued to believe that a comprehensive convention on international terrorism, covering every aspect of the problem, would be useful. The remaining points at issue in the draft comprehensive convention for the suppression of acts of nuclear terrorism should also be settled so that it could be adopted by consensus.

35. It was to be hoped that States would have the political will to cooperate more closely in developing international instruments that would complement the existing body of law, taking into account the concerns of all parties, especially those repeatedly voiced by the Organization of the Islamic Conference.

Agenda item 149: Scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel (A/59/52 and 226; A/C.6/59/L.9)

36. **Mr. Wenaweser** (Chairman of the Ad Hoc Committee and of the Working Group on the Scope of Legal Protection under the Convention on the Safety of United Nations and Associated Personnel) introduced

the Ad Hoc Committee's report (A/59/52) and the Working Group's report (A/C.6/59/L.9). The Ad Hoc Committee, focusing its attention on the expansion of the scope of legal protection under the Convention, had considered the proposal submitted by New Zealand to extend the scope of protection under the Convention to a range of operations in which the United Nations was engaged and to eliminate the requirement of a declaration of exceptional risk. The Committee had then considered a proposal by Costa Rica on the relationship between the 1994 Convention and international humanitarian law. Some delegations had expressed a preference for the elaboration of an optional protocol that would preserve the integrity of the Convention, while others had favoured the preparation of a stand-alone protocol or else a revision of the Convention. The Committee had continued its discussion on the definition of a United Nations operation, including the question of including the concept of risk. For some delegations, the most appropriate way of maintaining the element of risk was to base the definition on the purpose of the operation, whereas others had feared that such a definition did not sufficiently cover the element of risk. The Committee had also discussed the question of the respective responsibilities of host States and United Nations personnel. Lastly, it had considered the relationship between the protective regime of the Convention and the protection provided by international humanitarian law. The Committee had recommended that the General Assembly should renew its mandate for 2005.

37. The Working Group had considered articles II, III, IV and V of the text submitted by himself as Chairman and also the Costa Rican proposal. It had recommended that the Ad Hoc Committee should be reconvened with a mandate to expand the scope of legal protection of United Nations and associated personnel. It had also recommended that the Ad Hoc Committee should base its work on the Chairman's text and should consider the proposal by Costa Rica separately.

38. He had been encouraged by the constructive spirit prevailing during the Working Group's discussions, since he believed that Member States would need to show political will in order to reconcile remaining differences of opinion and reach agreement on the proposals. He urged all delegations to redouble their efforts to finalize the work on the draft protocol, given the urgency of the question. Practical measures should be adopted with all speed to enhance the security of United Nations personnel, who continued to be targeted in many parts of the world. However, Member States, too, had an obligation to provide adequate legal protection and to remedy the defects in the current protection system.

39. **Mr. Lauber** (Switzerland) said that his delegation strongly condemned all acts of violence directed against United Nations and associated personnel. It hoped that measures would be taken to establish a legal protection system that would have the maximum deterrent effect. Switzerland provided personnel for United Nations operations and his delegation was therefore grateful to the Chairman of the Sixth Committee Working Group for the draft text that he had submitted as the basis for an optional protocol that could be prepared in 2005. He also welcomed the consensus that had emerged on the need to expand the scope of legal protection currently available under the Convention on the Safety of United Nations and Associated Personnel, going beyond the requirement of a declaration of exceptional risk and setting up a clearer and more objective protection system.

40. **Mr. Peersman** (Netherlands), speaking on behalf of the European Union, the candidate countries Bulgaria, Croatia and Romania, the stabilization and association process countries Albania, Bosnia and Herzegovina, Serbia and Montenegro and the former Yugoslav Republic of Macedonia and the European Free Trade Agreement country, Iceland, member of the European Economic Area, welcomed the progress made by the Working Group on the Scope of Legal Protection under the Convention on the Safety of United Nations and Associated Personnel. The revised proposal submitted by New Zealand was particularly commendable.

41. The European Union continued to support the preparation of an additional protocol to the Convention that would extend the scope of its legal protection to certain United Nations operations other than peacekeeping operations without the need for a declaration of exceptional risk. The Union approved the text proposed by the Chairman of the Working Group and believed, with reference to article 3 of the text, that the broadest possible legal protection could be provided without detriment to the sovereign rights of States.

42. **Mr. Al-Shebli** (Kuwait) said that his country was deeply concerned at the attacks on United Nations personnel performing their assigned duties; he condemned one of the worst such attempts to date, namely, that carried out against the United Nations Office in Baghdad on 19 August 2003.

43. Kuwait had hosted the United Nations Iraq-Kuwait Observation Mission (UNIKOM) for more than 10 years and was therefore aware of the importance of a United Nations personnel presence on the ground. In addition to having acceded, on 18 August 2004, to the 1994 Convention on the Safety of United Nations and Associated Personnel, Kuwait had, on 30 September 2004, concluded an agreement with the United Nations on the establishment in its territory of the Office of the United Nations Assistance Mission for Iraq (UNAMI) and planned to provide the Mission with every facility required for its work.

44. Kuwait supported the adoption of a protocol to the 1994 Convention that would broaden the scope of its application and enhance the protection of United Nations and associated personnel without a review of the Convention. The protocol would define specifically, the operations covered by the Convention and the categories of personnel to be accorded legal protection. Kuwait hoped that a formulation accepted by all would be found with a view to guaranteeing the universality of the Convention.

45. **Mr. Eriksen** (Norway) commended United Nations and associated personnel, who risked their lives assisting people in conflict situations, but who were increasingly being attacked by belligerents. In 1995 Norway had ratified the Convention, which provided an effective framework for legal protection, and it was his hope that a larger number of countries would accede to the Convention.

46. His delegation was of the view that the establishment of the International Criminal Court would help to put an end to impunity for perpetrators of very serious crimes which shocked the conscience of humanity and he welcomed, in particular, the fact that article 8 of the Rome Statute considered serious infringements of the Geneva Convention as war crimes. He urged States that were not yet parties to the Rome Statute to consider ratifying or acceding to it without delay.

47. The international community needed to take stronger action to ensure that any act of violence committed against humanitarian personnel was investigated and that the perpetrators were brought to justice. For that reason, he felt encouraged by the increasing incorporation of the key provisions of the Convention into status-of-forces or mission agreements. The Norwegian delegation agreed with the Secretary-General that the requirement of a declaration of exceptional risk remained the main limitation to the protective regime under the Convention. The failure to issue a declaration of exceptional risk for the United Nations operation in Afghanistan, despite the recommendation to the General Assembly to that effect, showed that the current regime was not working as intended. The additional protocol whose drafting was proposed should, therefore, dispense with such a requirement. In that regard, the draft text submitted by the Chairman of the Working Group provided a constructive basis for continued discussions and should make it possible to broaden the scope of legal protection under the Convention. It was to be hoped that the General Assembly would soon reach consensus on the matter, given the importance of protecting United Nations and associated personnel, who were operating under very difficult circumstances.

48. **Mr. Barriga** (Liechtenstein) recalling the attack on the United Nations Office in Baghdad, condemned all acts of violence against United Nations local and international personnel, and said that the time had come to put an end to impunity for the perpetrators of such acts, which were rightly treated as war crimes by the Rome Statute of the International Criminal Court. Liechtenstein was convinced that broadening the scope of the Convention on the Safety of United Nations and Associated Personnel through an additional optional protocol would enhance the existing legal protection regime. His delegation supported the draft text proposed by the Chairman of the Working Group, which broadened the scope of legal protection without requiring a declaration of exceptional risk, for two reasons. First, the proposal would not impose inappropriate obligations of protection on host States, which could still exercise their national jurisdiction against law-breaking United Nations personnel. Lastly, the draft offered an array of measures to fight impunity for those who carried out attacks on United Nations personnel.

49. **Mr. Romero** (Brazil), speaking on behalf of the States members of the Rio Group (Argentina, Bolivia, Brazil, Chile, Costa Rica, Dominican Republic,

Ecuador, El Salvador, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela), said that the attacks on United Nations personnel in Baghdad and elsewhere made it more urgent than ever before to seek ways of improving their protection. On the one hand, legal protection needed to be improved through the adoption and application of international instruments; on the other hand, infrastructure and safety measures at Headquarters and in the field would have to be enhanced. The Rio Group therefore welcomed the measures adopted to enforce General Assembly resolution 58/82 and, in particular, the increasing incorporation of fundamental provisions of the Convention into status-of-forces and status-of-mission agreements.

50. The States members of the Rio Group called on all States that had not yet done so to ratify the Convention so that it would become a universal instrument. Admittedly, however, a protocol would need to be developed to broaden its scope of application to all United Nations operations and eliminate the requirement of the declaration of exceptional risk. It was to be hoped that Member States would reach consensus on the basis of the draft text proposed by the Chairman of the Working Group, which would be a good starting point for deliberations.

51. **Mr. Elmessallati** (Libyan Arab Jamahiriya) said that his delegation was extremely concerned at the intensified risk facing United Nations personnel. The very nature of the Organization's mission demanded that its personnel should be accorded the broadest possible protection and that both the United Nations and the international community as a whole must make extra efforts to that end.

52. Since all United Nations operations involved a degree of risk, the Libyan delegation deemed it preferable to maintain the distinction between "exceptional risk" and normal "risk" as specified in the 1994 Convention, and supported the proposals along those lines. Regarding the respective responsibilities of host countries and United Nations personnel, it would be advisable to develop a balanced formulation that did not negate the obligations arising from the 1946 Convention on the Privileges and Immunities of the United Nations.

53. While it was generally agreed that the protection of United Nations personnel should be enhanced, there was no apparent consensus on how to proceed. Revision of the 1994 Convention to broaden its scope of application fell into the procedural framework of article 40 of the Vienna Convention on the Law of Treaties, but was not compatible with current or future United Nations operations, nor did it take into account the urgency of enhancing staff protection. It would therefore be preferable to envisage the drafting of an additional protocol. His delegation looked forward to the achievement of consensus on the notions and definitions submitted by various delegations to determine how United Nations and associated personnel might be afforded the most effective legal protection possible.

54. **Mr. Tajima** (Japan) welcomed the fact that the Working Group had agreed to use its Chairman's text as the basis for its work. While it was understood that the text would not limit the right of delegations to propose amendments thereto, it was a positive development that the Working Group had held a lively and very substantive discussion on expansion of the scope of legal protection under the 1994 Convention on the Safety of United Nations and Associated Personnel, and on the revised text of a proposal submitted by Costa Rica concerning the relationship between the Convention and international humanitarian law.

55. Regarding article II, paragraph 1, of the Chairman's text contained in annex I to the report of the Working Group (A/C.6/59/WG.2/CRP.1), Japan was of the view that an appropriate definition of the scope of application, presented with clarity and taking into account the element of risk, would be useful for both host countries and countries sending personnel. In that regard, Japan preferred alternative C, which was clearer and better incorporated the elements of risk through its use of more precise language. Nevertheless, Japan was ready to consider any proposal aimed at further refining the language and looked forward to continued discussion of the matter.

56. The role of the United Nations in addressing conflicts throughout the world was more important than ever. Threats to United Nations personnel were increasing, as demonstrated by the terrorist attack against the Organization's Office in Baghdad on 19 August 2003. His Government attached great importance to ensuring the safety of United Nations and associated personnel under the Convention and, accordingly, expanding the scope of legal protection by means of a legal instrument to cover certain United Nations operations other than peacekeeping operations

without requiring a declaration of exceptional risk. Lastly, it was important for more countries to become parties to the Convention; States parties currently numbered 76.

57. **Mr. Hmoud** (Jordan) recalled that during the past three years the United Nations had taken various measures to improve legal protection for United Nations and associated personnel. The General Assembly had adopted several resolutions, including resolution 58/82, which defined short- and long-term measures that could be taken to strengthen legal protection for personnel participating in United Nations operations. For its part, the Security Council had adopted resolution 1502 (2003), in which it expressed its determination to issue, under appropriate circumstances, a declaration of exceptional risk for the purposes of applying the 1994 Convention on the Safety of United Nations and Associated Personnel. In addition the resolution invited the Secretary-General, when he deemed it to be justified, to advise the relevant United Nations body that it should make such a declaration. Nevertheless, in his report (A/59/226), the Secretary-General continued to express reservations with regard to recommending such a declaration for a number of political, logistical or circumstantial reasons. He further indicated that on the sole occasion that he had advised the General Assembly to declare the existence of an exceptional risk, the Assembly had not acted on his advice.

58. It was therefore perfectly clear that there was a problem regarding implementation of the mechanism provided for in article 1, paragraph (c) (ii), of the 1994 Convention. While attacks against personnel taking part in United Nations operations were increasing, it seemed as though the legal protection regime in force was insufficient and that it was necessary to enlarge its scope to cover operations that carried a specific risk. In that connection, Jordan had submitted a proposal regarding various ways of strengthening such protection. His Government was also aware that to ensure the universal accession which the 1994 Convention had so far failed to achieve, the legal instrument would have be drafted taking into account host country concerns, in particular those relating to the right to exercise criminal jurisdiction over members of a United Nations operation who, in the exercise of their functions, violated its domestic law. It was to be hoped that such a major impediment to the universality of the Convention could be treated in a constructive manner in the draft instrument enlarging the scope of protection.

59. He thanked the Chairman of the Working Group for drafting a text that could serve as the basis of negotiations and that had been approved by consensus for use as the basis of future work. In addition, the definition of the relationship between international humanitarian law and the 1994 Convention was important and should be studied by the Ad Hoc Committee. Jordan, for its part, was prepared to cooperate with all parties involved to advance the negotiations aimed at the adoption of a protocol to enlarge the scope of legal protection to cover the relevant United Nations operations.

60. **Mr. Aileene** (New Zealand) paid tribute to United Nations and associated personnel for their courage and commitment to the Organization's work of strengthening and maintaining peace and delivering assistance to those in need. It was of deep concern that the dangers faced by personnel in the field had increased dramatically over the past decade. There was no doubt that the threat to United Nations personnel was real, and Member States must do everything in their power to address it. Any attack on the Organization's personnel was an attack on the effectiveness and the very purposes of the Organization itself. The situation therefore required action on several fronts.

61. New Zealand supported the work of the members of the Fifth Committee, who were currently focusing on the urgent need to strengthen the security arrangements for United Nations operations in the field, including substantial organizational reform. Legal measures, too, played an important role in ensuring that personnel were adequately protected and that those who committed crimes against them were brought to justice. In that regard, it was essential that the international legal regime should offer the highest possible standard of protection for United Nations and associated personnel. New Zealand joined the Secretary-General in calling for all States to become parties to the 1994 Convention on the Safety of United Nations and Associated Personnel. In addition, it was prepared to work with all States to conclude a new optional protocol to the Convention, which would improve and extend the scope of legal protection for United Nations and associated personnel.

62. Discussions held during the recent meeting of the Committee's Working Group had been encouraging.

His delegation welcomed the Group's recommendation to use the Chairman's text as the basis of future work. It was nonetheless clear from the draft text that differences of opinion remained with regard to certain issues. New Zealand was ready to focus on those differences in the coming months so that an optional protocol expanding the scope of application of the 1994 Convention could be adopted without delay.

63. **Ms. Ramos Rodríguez** (Cuba) said that her delegation firmly condemned all attacks against United Nations and associated personnel. Such attacks were unjustified and constituted an offence that should be severely punished by law in all States. Although Cuba was not a party to the Convention on the Safety of United Nations and Associated Personnel, of 1994, its legislation penalized acts, assaults and attacks against internationally protected persons.

64. Her delegation continued to believe that the best way of strengthening protection for United Nations and associated personnel was to apply the Convention and ensure that its principles were based on international law. It was above all the responsibility of States parties to the Convention, pursuant to its article 23 and to the Vienna Convention on the Law of Treaties, to review its application and shortcomings, as well as proposals concerning its amendment or the adoption of a related instrument.

65. In spite of the foregoing, her delegation had participated constructively in the work of the Ad Hoc Committee and the Working Group and wished to highlight a few points that it considered important: Cuba believed that extending the scope of application of the Convention to all types of United Nations operations or "presences" was not desirable, for fear of upsetting the balance of the existing legal regime or imposing too heavy a burden on host States; any expansion of the scope of application should clearly reflect the element of risk, and "exceptional risk" should be distinguished from "situation of exceptional risk". It would be useful to consider the types of United Nations operations which by their nature carried an exceptional risk and to which the Convention, as revised, would apply in relation to the rules of international humanitarian law; the delicate balance of the Convention must not be disturbed, should a protocol be added. Lastly, it would be useful to study the reasons why certain States were prevented from acceding to the Convention before studying proposals which reflected the interests of certain delegations. Any attempt to amend the Convention without taking the above points into account ran the risk of being counterproductive and thus impeding new ratifications.

66. Her delegation recalled that the safety of United Nations and associated personnel depended also upon such personnel discharging their functions in an impartial manner, in conformity with international law and the principles set out in the Charter of the United Nations, and the laws, cultures and national character of host countries.

67. **Mr. Padukkage** (Sri Lanka) said that over the years, the number and gravity of deliberate attacks against humanitarian personnel had been increasing, with locally recruited staff becoming particularly vulnerable. Accordingly, the protection obligations of the United Nations were becoming increasingly challenging and complex. Sri Lanka unreservedly condemned those attacks and joined the international community in urging that those responsible should be brought to justice. It was the responsibility of Member States to provide protection to United Nations and associated personnel engaged in risky missions.

68. The scope of the 1994 Convention on the Safety of United Nations and Associated Personnel, to which Sri Lanka had become a party in 2003 and to whose effective implementation it was committed, should be broadened to cover certain types of United Nations operations other than peacekeeping. There were gaps to be addressed in the Convention because of the range of operations that had not been envisaged when the Convention had been concluded and because of the increasing threats to the safety of United Nations and associated personnel engaged in different types of risky operations. Notably, the "exceptional risk" element contained in the Convention had not been defined. As the Secretary-General indicated in document A/59/226, no declaration of risk had so far been made, even though certain United Nations operations were indeed very risky. Nor were there generally accepted criteria that the Security Council could use to determine situations of exceptional risk to which the Convention would apply. Such application would become even more complex in operations involving both combatants and United Nations personnel.

69. From that angle, the challenge facing the Working Group would be to incorporate the range of operations in which United Nations and associated personnel were currently engaged while reflecting, in

an appropriate manner, the notion of risk. In that regard, the notions of "emergency" or "special assistance" situations would require further discussion. His delegation also viewed the Costa Rican proposal on the relationship between the Convention and international humanitarian law as highly relevant and worth considering. The Ad Hoc Committee should work to close the gaps in the 1994 Convention, using its Chairman's text as a good basis for further negotiations. However, the concerns of all delegations should be taken into account in the process and the discussions should continue in a spirit of compromise, with care taken to ensure that the setting up of a new legal regime did not disturb the integrity of the one which currently existed.

70. **Mr. Rosand** (United States) said that his Government continued to support the 1994 Convention and hoped to be in a position to ratify it soon. The United States was conscious of the risks faced by United Nations and associated personnel in a variety of contexts around the world and appreciated the bravery, dedication and sacrifice of those men and women who participated in such operations on behalf of the United Nations.

71. With respect to the discussion in the Ad Hoc Committee during the spring of 2004 and in the Working Group, more recently, about extending the application of the Convention to a broader set of United Nations operations, his delegation continued to be generally supportive of that approach. The United States believed that a stand-alone protocol could be concluded and that the discussions in the Working Group had provided a useful and productive review of the Chairman's draft text.

72. The United States also believed that more work had to be done to increase the number of parties to the Convention. To make any progress, however, the concerns of current and future host countries would have to be identified and assuaged without eroding the protections offered to United Nations and associated personnel.

73. **Mr. Jian** (China) said that his Government had completed the domestic legislative procedure required to accede to the Convention and had deposited its instrument of ratification with the Secretary-General during the year. China was committed to fulfilling its treaty obligations in good faith and stood ready to work with other countries to ensure the safety of personnel taking part in United Nations operations.

74. The reality was that the security situation of such personnel was steadily worsening and casualties among them were mounting. The Chinese delegation therefore supported the adoption of further measures to enhance protection of the safety of United Nations and associated personnel. It was gratified by the important progress made at the recently concluded session of the Working Group, which had agreed to use the draft text prepared by its Chairman as a basis for its future work. More delegations would now have to comment on that text so that the draft protocol could be negotiated on the basis of consensus. It was encouraging that at the current session of the Working Group, the idea of broadening the scope of protection offered to United Nations and associated personnel had secured unanimous support.

75. China's principled position on the scope of application of the optional protocol was that the risk element should be the basic condition for the applicability of the protocol, not only because that would facilitate the early conclusion of the work, but also because it would give expression to the imperative of protecting personnel taking part in United Nations operations. More countries, particularly those hosting United Nations operations, would consequently find it more attractive to become parties to the protocol. It was to be hoped that the protocol would strike a delicate balance between the rights and obligations of States parties. Some States had adopted a constructive approach in that regard and, in the same spirit, China stood ready to participate in the consultations with a view to producing a draft text acceptable to all.

76. **Ms. Ahn** (Republic of Korea) expressed appreciation to the Chairman of the Ad Hoc Committee and the Working Group on the Scope of Legal Protection under the Convention on the Safety of United Nations and Associated Personnel for the text he had drafted to facilitate the deliberations; her thanks also went to those countries which had submitted proposals. During the Working Group meeting, her delegation had supported China's proposed alternative B with the caveat that certain risky situations which did not quite rise to the level of armed conflict should also be covered. Her delegation would submit appropriate wording to that end, because it supported extension of the scope of application of the Convention to cover inherently risky situations that were not

amenable to a declaration of exceptional risk, and would fully cooperate in working out an optional additional protocol.

77. The Republic of Korea was also grateful to the Costa Rican delegation for its proposal on the relationship between the 1994 Convention and international humanitarian law, which it would study carefully. The two were not mutually exclusive, and where the demarcation line was not very clear, there were situations to which both regimes could and should apply. The law of armed conflict did not impose the same level of obligations on the parties to a conflict to take measures to ensure the safety of United Nations and associated personnel because attacking and being attacked by adversaries was to be expected during hostilities. In certain instances, the 1994 Convention better protected United Nations and associated personnel from crimes of intentional murder and provided for the punishment of perpetrators. The problems that the Costa Rican proposal sought to address, however, were understandable.

78. As for the declaration of exceptional risk, her delegation urged the General Assembly and the Security Council to endeavour to issue timely declarations where warranted. The practical and speedy use of the declaration mechanism might well obviate the need to expand the scope of protection offered by the 1994 Convention to a level that impeded the attainment of universal accession to the Convention.

79. **Mr. Chowdhury** (Bangladesh) said that as a State party, Bangladesh was deeply committed to the provisions of the 1994 Convention. He noted with satisfaction that the core provisions of the Convention had been included in a growing number of status-of-forces and status-of-mission agreements. Obtaining universal acceptance of the Convention would be a good way to extend the scope of its application. Bangladesh was closely involved in United Nations peacekeeping operations and had consistently been among the major troop contributors. Bangladeshi peacekeepers had been deployed in conflict zones all over the world. Member States must act together to ensure the security of United Nations and associated personnel, and the first step would be to ratify or accede to the Convention.

80. His delegation had taken note of the reports of the Ad Hoc Committee and the Working Group on the Scope of Legal Protection under the Convention and hoped that, by keeping the collective interest in view, the Sixth Committee would be able to determine the best alternative by consensus concerning article II in the light of the text drafted by the Chairman. His delegation would extend its fullest cooperation in pursuit of that goal.

81. **Ms. Nyirinkindi** (Uganda) pointed out that almost every year there was an increase in attacks against United Nations personnel and the civilians working alongside them in the service of the Organization. What was even more appalling was that often the competent authorities did nothing by way of investigating those crimes and punishing the perpetrators. For that reason, she had noted with appreciation in the Secretary-General's report (A/59/226) information about additional measures that had been taken to strengthen the security of locally recruited personnel who remained vulnerable to attacks. The report also stressed the need to incorporate key provisions of the Convention into status-of-forces and status-of-mission agreements in all cases where host countries were not signatories to the Convention.

82. That underscored Uganda's support for measures to expand the scope of the Convention, and its readiness to work on the basis of the Chairman's proposal, even as it continued to agree with those delegations which advocated the importance of securing more universal accession to the Convention itself. The two objectives were not mutually exclusive. For Uganda, the Chairman's text was a very progressive option in that it catered for a growing number of non-peacekeeping operations conducted by the United Nations and thus covered the lacunae found in the Convention. The Committee should not limit itself to short-term measures; furthermore, the proposal did not undermine the integrity of the Convention. That, however, did not mean reinstating the need for a declaration of exceptional risk. In Uganda's view, such a declaration would be unnecessary. Rather, what should be retained was the idea of a situation entailing exceptional risk, and that distinction was important.

83. In conclusion, she expressed the hope that, while refraining from burdening States with obligations that might not be easy to fulfil, it would be possible to afford United Nations and associated personnel the most comprehensive protection possible.

The meeting rose at 6 p.m.

United Nations A/C.6/59/SR.11

General Assembly
Fifty-ninth session

Official Records

Distr.: General
14 January 2005

Original: English

Sixth Committee

Summary record of the 11th meeting
Held at Headquarters, New York, on Thursday, 21 October 2004, at 10 a.m.

Chairman: Mr. Bennouna ..... (Morocco)
later: Mr. Dhakal (Vice-Chairman) ..... (Nepal)

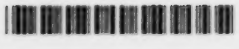
Contents

Agenda item 150: International convention against the reproductive cloning of human beings

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of publication* to the Chief of the Official Records Editing Section, room DC2-750, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

04-56482 (E)



The meeting was called to order at 10.15 a.m.

Agenda item 150: International convention against the reproductive cloning of human beings
(A/C.6/59/L.2 and L.8; A/C.6/59/INF/1)

1. **Mr. Tovar** (Costa Rica), introducing the draft resolution on an international convention against human cloning (A/C.6/59/L.2) on behalf of the original sponsors and Georgia, Ireland, Kazakhstan and Uzbekistan, said that the international community must decide whether to opt for utilitarian ethics allowing therapeutic cloning, in other words the deliberate creation of human embryos which would be destroyed for the purposes of scientific experiments, or whether to cleave to humanist ethics resting on respect for the individual in all circumstances. His Government took the view that human beings must take priority, although it was wholeheartedly in favour of scientific and medical advances, within ethical limits, which made it possible to cure disease.

2. It had, however, to be remembered that if some new technologies, like human cloning, fell into the wrong hands they could be used to violate human rights and dignity by turning human beings into no more than manufactured objects. All cloning was an affront to human dignity and to the dignity of women. That technique also endangered the lives of women donating ova. Human embryos should not be treated like objects, for there was no essential difference between an embryo, a foetus, a child, a young person or an adult, and they should not therefore be destroyed to satisfy scientific curiosity. Moreover, experimental cloning was unnecessary, since recent cases had shown that adult stem cells could cure the same diseases as those which the proponents of therapeutic cloning were seeking to treat. Allowing experimental cloning would create conditions in which unscrupulous scientists might attempt reproductive cloning, since the techniques were indistinguishable. The draft resolution therefore drew attention to the inherent dangers of cloning and called for a ban on all research into it and into genetic engineering techniques that might have adverse consequences for human dignity. It further encouraged States to redirect the funds that they would have spent on such research to the fight against the pressing health problems of developing countries. Science must always be at the service of humanity and not vice versa.

3. **Mr. Pecsteen** (Belgium), introducing the draft resolution on an international convention against the reproductive cloning of human beings (A/C.6/59/L.8) on behalf of the original sponsors and France, said that the draft text, which had been submitted in a spirit of compromise, did not necessarily conflict with that introduced by Costa Rica, since it did not rule out the possibility of a State forbidding all forms of human cloning, nor did it recommend therapeutic cloning or seek to justify it; it merely acknowledged the existence of diverging views on the subject, with some countries wishing to safeguard the possibility of further scientific research which might prove a boon to millions of sufferers from incurable diseases, while others had prohibited it. Since the draft text proposed a total ban on reproductive cloning and was based on a common denominator it would receive the support of most States which were conducting scientific research into cloning, whereas the approach recommended in the document introduced by Costa Rica might well result in a convention which would not be endorsed by those States, although their accession was crucial. The text was largely similar to that introduced the previous year, save that it expressly stated that "regulation" also meant strict controls to ensure that the results of therapeutic cloning were not used to advance reproductive cloning. The precise nature of such controls could be specified in the convention.

4. Arriving at a tangible result was a matter of urgency, since some irresponsible scientists had announced their intention of cloning a human being. Against that background it was regrettable that the Committee had been unable to fulfil the mandate given to it in General Assembly resolution 56/93. If the path originally suggested by France and Germany had been followed a convention would already have been adopted. The Committee's objective should be to arrive at a convention ratified by the largest possible number of States, which would make a real practical difference, rather than at a symbolic victory lacking any genuine effect. It would be inadvisable to base international law on a deeply divisive vote which might induce some delegations to shun participation in the drafting of the convention in question, but it was still possible to achieve a consensus, because the sponsors of the draft resolution were open to dialogue and ready to explore any new avenues leading to a compromise text.

5. **Mr. Sinaga** (Indonesia) said that no single issue attracted such passionate attention or was as divisive as

cloning, yet all States wished to ban the reproductive cloning of human beings and to draft an internationally binding instrument to that effect. Such a step was important at a time when some scientists were trying to conduct dangerous experiments in the unnatural, asexual reproduction of human beings, for which there was no justification. The Ad Hoc Committee on an International Convention against the Reproductive Cloning of Human Beings should be reconvened, because an international convention on that subject was urgently required, as was strict supervision of all cloning research, including that which might ultimately prove beneficial to human beings, in order to preserve human dignity. A common position should be sought which was prompted by the best interests of the human race and not its exploitation or degradation. Any initiative to smooth over differences and achieve consensus would be welcome.

6. **Mr. Shin** Kak-soo (Republic of Korea) said that it would be imprudent to take a hasty decision on human cloning. Although ethical aspects should receive serious consideration, there was no justification for a total ban on all forms of human cloning, because therapeutic cloning could potentially give hope to hundreds of millions of sufferers from incurable diseases and injuries. The differences between reproductive and therapeutic cloning were such that therapeutic cloning would not eventually lead to reproductive cloning. The enormous difficulties encountered in animal cloning made successful human cloning virtually impossible. Furthermore, the embryonic stem cells derived from a blastocyst which were used in therapeutic cloning could not properly be regarded as a potential human being and did not yet represent human life.

7. Flexibility was the best way of accommodating the many different religious and moral views about the starting point of human life and so a regulatory system should offer the option of a ban, a moratorium or stringent control of cloning. Therapeutic cloning must be placed under strict State supervision and tight international regulations must be introduced to eliminate cloning havens. In order to preclude the exploitation of women for the extraction of their eggs, it would be necessary for each State to enact laws allowing the donation of human ova, but prohibiting their sale.

8. Adult stem cell research was no substitute for medical cloning because embryonic stem cells could generate tissues without triggering immune rejection. Adult stem cells could provoke immune rejection, they were highly specialized and their potential to regenerate damaged tissue was limited. Embryonic stem cells could produce any of the 210 different types of specialized cells that made up the human body.

9. The wide divisions within the Committee did not augur well for an early start on serious negotiations on a human cloning convention putting in place an enforceable and effective international legal regime for regulating human cloning. It was therefore necessary to find sound factual and legal ground on which a general consensus could first be built. To that end, it would be advisable to hold a scientific conference the following year in order to obtain a more accurate factual picture of human cloning technology and its implications. The Secretariat should also make a compilation of domestic laws and regulations on human cloning and distribute it to all Member States. That process would help the Committee to identify legal means at the domestic or international levels to rule out any possibility of misusing human cloning and would promote agreement as to the next steps to be taken. A practical, gradual approach to such a thorny issue would be more likely to preserve the possibility of alleviating the suffering caused by incurable degenerative diseases through embryonic stem cell research and therapeutic cloning.

10. **Mr. Tajima** (Japan) said that his delegation associated itself with the statement by Belgium on behalf of the sponsors of draft resolution A/C.6/59/L.8. Japan's position was clear and pragmatic. First, an international convention on cloning should be acceptable to as many countries as possible, since it must be universal to be effective. Second, Japan did not support the position that all human cloning should be prohibited, since it felt that it was not appropriate to close the door on future scientific progress that had the potential to save lives threatened by serious diseases. Third, the historical, ethical, cultural and religious traditions of each country should be respected. Its conclusion was that the prohibition in the convention should be limited to reproductive cloning of human beings, on which a consensus existed.

11. In Japan legislation prohibited the production of cloned human individuals, but the Governmental Council of Japan had decided to permit the creation of human embryos by somatic cell nuclear transfer and their utilization for basic research under strict

conditions. After guidelines had been prepared by the ministries concerned, research would commence.

12. Japan was a sponsor of the draft resolution introduced by Belgium because it did not impose one particular view but offered a choice and was therefore more likely to lead to a consensus. His delegation shared the strong desire of many delegations for a convention to be adopted by consensus. Accordingly it thought that no premature action should be taken on the issue and that the members of the Committee should continue to explore ways to achieve consensus by demonstrating flexibility and a cooperative spirit.

13. **Ms. Tuğral** (Turkey), speaking on behalf of the Organization of the Islamic Conference (OIC), said that the mandate setting out the framework for a universally acceptable convention on the issue of human cloning could only be based on consensus. During the fifty-eighth session of the General Assembly the Sixth Committee had been deadlocked between two competing draft resolutions, each sponsored by a large number of countries. It would be in the interest of all delegations to avoid repeating the same deadlock and to strive for a more productive and consensual outcome. A vote on either of the proposals would be divisive, unproductive and inconsistent with the Committee's practice of deciding matters of substance by consensus. Moreover, the ad hoc committee meeting on the basis of such a mandate would face the same opposing views or lose the participation of many delegations. The OIC member States supported a total ban on reproductive cloning of human beings. They would also like to see a consensus on how to deal with all forms of human cloning but did not wish a mandate to be imposed in a way that would undermine the universality of the convention from the outset.

14. **Mr. Andjaba** (Namibia) said that Namibia opposed the reproductive cloning of human beings. It also believed that States with the requisite technology should continue their medical research on therapeutic cloning for the benefit of all humankind. It respected the views of States that wished to ban therapeutic cloning and suggested that those States might impose a comprehensive ban on human cloning through their own national legislation. Since there appeared to be a very broad consensus on the need to ban reproductive cloning and in view of the consensual tradition of the Committee and the consensual nature of conventions negotiated and adopted under the auspices of the United Nations, his delegation hoped that the Committee could proceed on the basis of that consensus and recommend the negotiation and adoption of a convention banning reproductive cloning.

15. **Ms. Rasi** (Finland) said that her delegation, like other delegations, condemned all efforts to reproduce human beings by cloning as contrary to human dignity. Although there was a wide international consensus on the unacceptability of reproductive cloning, delegations were divided in their opinions on other types of cloning. To some, stem cell research constituted an unacceptable violation of human life, while others considered that it could potentially save human lives. Her delegation was among those which believed that therapeutic cloning had great potential for curing a wide range of serious illnesses involving damaged tissues. Therefore, it could not accept a solution aimed at a total prohibition of therapeutic cloning. The divergent views on therapeutic cloning were mainly due to different moral, ethical and religious values and convictions and were thus to be respected. Her delegation did not expect others to align their views on therapeutic cloning with its own, but it was of the utmost importance that the outcome of the Committee's work should be based on a solution acceptable to all. All delegations were aware that international conventions were often based on the lowest common denominator.

16. Her delegation was of the view that draft resolution A/C.6/59/L.8 represented a consensus solution. It expressly prohibited reproductive cloning, while providing various alternatives with regard to other forms of human cloning, permitting States parties either to ban them, impose a moratorium on them or regulate them by means of national legislation, imposing strict controls. In Finland, research on embryos was allowed to be performed only by licensed agencies, and each specific research project was first evaluated by an ethics committee. Research without prior approval by that committee was prohibited and criminalized. Although a sponsor of draft resolution A/C.6/59/L.8, her delegation was open to other proposals with a view to reaching a compromise solution.

17. **Sir Emyr Jones Parry** (United Kingdom) said that the United Kingdom was totally opposed to human reproductive cloning and had been one of the first countries in the world to ban it. It would support any initiative by the United Nations that would achieve an

effective global prohibition. However, the United Kingdom could not support any attempt to ban or unreasonably restrict cloning for research purposes, known as therapeutic cloning, which held enormous promise for new treatments for serious degenerative conditions that were currently incurable. In the United Kingdom, therapeutic cloning was allowed but was strictly regulated. No one could carry out embryo research without a licence from the regulatory body, and no research was allowed on embryos over 14 days old.

18. Opponents of therapeutic cloning argued that it was impossible to ban one type of cloning and not others. On the contrary, it was entirely possible to frame legislation that banned reproductive cloning only. The United Kingdom had done so successfully and was willing to share its legislation as a model. Another argument raised was that therapeutic cloning would require a limitless supply of eggs and that women would be exploited to provide them. That was not the case. The United Kingdom had created the first stem cell bank in the world, to which all researchers were required to donate a sample of their embryonic cell lines. The bank was able to grow more of the same cells and make them available to other researchers. Eventually the bank would store sufficient stem cell lines to provide a match for all the main human tissue types, so that it would not be necessary to create a new stem cell line for each person requiring treatment, and the number of lines needed would be small. A third argument cited was that adult stem cells could be used instead of embryonic stem cells. Although the United Kingdom supported research into all types of stem cells, it was already clear that there were some things that could be done with therapeutic cloning that could simply not be done with adult stem cells. For example, therapeutic cloning allowed for the creation of stem cell lines with specific genetic markers for diseases on which new drugs and new treatments could be tested.

19. His delegation recognized that embryo research and cloning raised important ethical issues. In the United Kingdom those issues had been debated for over 20 years, and its current position had been reached after extensive public and parliamentary discussion. Members of Parliament, freed from voting along party lines, had voted three to one to ban reproductive cloning but to allow therapeutic cloning, and opinion polls showed that over 70 per cent of the British public supported such research. The United Kingdom respected the cultural, social and religious differences that might lead other countries to a different conclusion with respect to therapeutic cloning, and it asked for the same respect in return. It would be wrong for the United Nations to attempt to override the position reached in the United Kingdom through its democratic processes.

20. His delegation was one of the sponsors of the Belgian draft resolution (A/C.6/59/L.8) because it would ban reproductive cloning, a point on which all delegations agreed, but would allow each country to decide for itself whether to ban therapeutic cloning or not. It embodied a position of mutual respect and tolerance for different national positions. The Costa Rican draft resolution (A/C.6/59/L.2), on the other hand, allowed for no difference of opinion and sought to impose a single dogmatic viewpoint on the rest of the world. If the United Nations were to elaborate a convention banning both therapeutic and reproductive human cloning, his delegation would not participate in the negotiations and would not sign the convention, and therapeutic cloning would continue to be permitted in the United Kingdom. The Committee had a choice. It could repeat the previous year's sterile stand-off, or it could agree to work on a convention to ban reproductive cloning, the one point on which all delegations agreed. Draft resolution A/C.6/59/L.8 offered a way forward.

21. **Mr. Póvoas** (Portugal) said that his delegation's position was based on the principle that every State had a duty to protect human life and the rights of its citizens. It understood that stem cells played a crucial role in cell replacement and might hold the key to a cure for many diseases. However, there were three main types of stem cells: embryonic stem cells taken from embryos five to six days old, with the resulting death of the embryo; stem cells of foetal origin, from the umbilical cord or foetal tissue; and stem cells from a variety of adult tissues. Portugal emphatically rejected the use of embryonic stem cells, finding the idea of creating and destroying human life for scientific research deeply disturbing. To use an embryo as a source of body cells was to treat the embryo purely functionally, as a resource and not as a reproductive entity. His delegation was also concerned that allowing therapeutic cloning with embryos would inevitably lead to other completely unacceptable forms of cloning. Moreover, it considered the social risks and dangers the procedure would entail in developing

countries, where millions of women might be offered money in exchange for their egg cells, to be totally unacceptable. Furthermore, so far there were no reports of patients having benefited from embryonic stem cell research. Adult stem cell research, of course, should be encouraged and allowed, and there was no reason not to investigate stem cells from umbilical cords. In such a sensitive matter, the interests of powerful financial groups or pharmaceutical companies must necessarily take second place.

22. In Europe a start had been made with the Council of Europe Convention on Human Rights and Biomedicine, which prohibited the production of embryos for research purposes, and its Additional Protocol of 1998 prohibiting the cloning of human beings. The Charter of Fundamental Rights of the European Union, adopted in 2000, prohibited the reproductive cloning of human beings, eugenic practices and the use of the human body and its parts as a source of financial gain.

23. Since the current purpose of the Committee was to approve a draft resolution containing a mandate for an ad hoc committee to negotiate an international convention against the reproductive cloning of human beings, his delegation supported the draft resolution introduced by Costa Rica (A/C.6/59/L.2).

24. **Mr. Sardenberg** (Brazil) said that, from the inception of the debate on cloning in the General Assembly, his delegation had consistently emphasized the need to reach a consensus formula accommodating different positions, in view of the importance of adopting a convention against reproductive cloning that would be broadly acceptable. Brazil supported the draft resolution introduced by Belgium (A/C.6/59/L.8) because it was both pragmatic and principled. It was practical because it recognized that the ethical considerations underpinning conflicting points of view were not likely to change in the near future; it was principled because it reflected the one basic point of consensus achieved so far, the notion that cloning for purposes of human reproduction was morally unacceptable.

25. It must be stressed that the proposed convention would not preclude the adoption of stricter standards at the national level. Although the adoption of such a convention could not be an absolute guarantee against the folly of some, it was vital that the international community should send a clear message that unethical behaviour in the domain of cloning would not be accepted. Equally important, it would provide support and stimulus for the development of specific legislation at the national level.

26. The most effective way to foil questionable practices was to foster scientific freedom to research and develop acceptable alternatives. Although adult stem cell research had promise, it was not clear that it could provide a satisfactory alternative to the use of embryonic stem cells. On the other hand, only further research would determine whether embryonic stem cells could be used in a manner that was scientifically sound and ethically acceptable. One should be cautious about suppressing scientific research, progress and knowledge on the grounds that they might be misused. In view of the potential of therapeutic cloning in the alleviation of suffering, his delegation thought that the moral grounds for condemning therapeutic cloning by equating it to a human rights issue were not clear-cut and that examination of the question would benefit from the provision of further information, particularly as to the curative potential of embryonic stem cells.

27. The scientific community and civil society in Brazil repudiated the use of embryos and DNA manipulation for eugenic purposes. His Government had been coordinating high-level scientific, ethical and legal meetings to discuss a regulatory framework concerning genetic manipulation, and the Congress was debating a federal bill on the issue.

28. The proposed international convention against the reproductive cloning of human beings was a timely initiative in response to announcements suggesting that experiments with human embryos were imminent in some countries. Nevertheless, despite the urgency, a decision on a matter of such importance required a solid scientific and ethical basis, and consensus was highly desirable, so that the future convention would be widely accepted.

29. **Mr. Menon** (Singapore) expressed his regret that the Committee had nothing to show for the past three years' work. There could be no unanimity of views on ethics and religious belief; moreover, new scientific discoveries posed challenges and provided opportunities that would be responded to differently by different societies. In some circumstances it was better to agree to disagree, but on matters that enjoyed consensus, swift action was needed.

30. In document A/C.6/59/INF/1, the Holy See maintained that "honesty suggests that if one specific course of research has already demonstrated conditions for success and raises no ethical questions, it should be pursued before embarking on another that has shown little prospect of success and raises ethical concerns". However, honesty could also be said to suggest that if the debate had already demonstrated consensus on the need to deal with one specific danger that raised ethical concerns — reproductive cloning — then its prohibition should be pursued before embarking on the divisive proposal to ban therapeutic cloning.

31. The specific course of research to which the Holy See referred, adult stem cell research, had already been pursued and was more advanced than the nascent field of embryonic stem cell research. The Holy See's document also displayed a certain anxiety that the new field was competing for resources. However, if resources were indeed moving away from adult stem cell research towards the new field, it was because that field held greater promise, owing to the fact that embryonic stem cells were "pluripotent"; they could reproduce any cell in the body.

32. The reality was that some wished to pursue adult stem cell research to the exclusion of embryonic stem cell research, whereas those who supported giving posterity a chance to benefit from therapeutic cloning did not advocate closing down the former field of research. Similarly, draft resolution A/C.6/59/L.8 was not the "opposite" of draft resolution A/C.6/59/L.2; if that were so, it would insist that all countries must allow therapeutic cloning.

33. Singapore supported draft resolution A/C.6/59/L.8 because it respected the right of States to decide for themselves on matters that did not yet enjoy international consensus. Those who advocated banning therapeutic cloning claimed that it was difficult, uncertain and raised ethical concerns. However, many valuable discoveries had resulted from difficult research. All scientific research was uncertain, requiring perseverance and patience, and research should not be banned merely because it was controversial. Such research should, of course, be conducted only under strict safeguards; Singapore had recently adopted legislation regulating stem cell research in a manner that its society found ethically acceptable and only after an extensive public consultation process.

34. At the heart of the problem was the definition of human life and the point at which it began. While those who opposed therapeutic cloning said that human life was created and destroyed during that process, another view, espoused by United States Senator Orrin Hatch (a Republican) was that there was no greater way to promote life than to find a way to defeat death and disease.

35. What troubled his delegation was that one group of States was trying to impose their value judgements on all States and that their inflexible, unconstructive attitude was preventing the international community from taking urgent action to outlaw reproductive cloning, to which the entire international community was opposed. If those States persisted in taking a divisive approach with a view to scoring short-term political gains, they might end up negotiating only among themselves, which was not the way to forge universal norms. Great harm would befall the United Nations if some States were to use such a precedent to push their viewpoint on other controversial issues through a vote rather than through the patient development of a consensus.

36. In closing, he paid a tribute to the courage of the late Christopher Reeve, whose hope had triumphed over the unfounded belief, fuelled by fear-mongering, that therapeutic cloning could not be regulated and who had believed that the benefit to society was worth the risk, since the unfertilized eggs used for therapeutic cloning would never leave the laboratory.

37. **Ms. Collet** (France) recalled that her delegation had joined Germany in proposing the inclusion of an item entitled "International convention against the reproductive cloning of human beings" in the agenda of the General Assembly.

38. On 6 August 2004, after a lengthy debate, the French Parliament had adopted legislation that banned reproductive cloning and created a new "offence against humankind", allowing violators who were French citizens or residents to be prosecuted even if the offence was committed outside French territory. The new Act also banned therapeutic cloning; however, it included a special five-year authorization of research on embryos for therapeutic purposes.

39. Her delegation was not advocating the preparation of an international instrument modelled on its own national legislation because, in its view, there was no universal consensus on banning all forms of

cloning and only an instrument with universal adherence could be effective. The past three years had shown that there was a clear consensus only on the banning of reproductive cloning and the threat of dangerous experimentation made it urgent to combat that practice, preferably through a convention. Separation of the two issues of reproductive and therapeutic cloning would not prevent States from banning all forms of cloning if they wished to do so; she encouraged the continuing exchange of information on national legislation and experience in such a complex area. For those reasons, her delegation was one of the sponsors of the draft resolution introduced by Belgium (A/C.6/59/L.8).

40. **Mr. Mishra** (India) said that while India considered reproductive cloning morally unacceptable and had banned it in 1997 through a set of ethical guidelines on medical research, a responsible State regulated the use of technology by striking a balance between ethical standards and social benefits. Somatic cell nuclear transfer should not be used to create a child because such research would be unethical and entailed unacceptable risks, but it could be used to free mankind from illness and debility.

41. The transfer of technology from developed to developing countries had become increasingly difficult as developing countries, especially those with a strong scientific and industrial base, faced overt and covert restrictions on their technological development and were prevented from pursuing autonomous research in certain areas. His delegation believed that every country had the right to choose its technological methods and procedures, so long as they did not violate universally accepted standards of human dignity. For those reasons, it could not accept the proposal contained in draft resolution A/C.6/59/L.2.

42. **Ms. Ramos Rodriguez** (Cuba) reiterated her delegation's view that the cloning of human beings was irresponsible, unethical and contrary to the values of Cuban society. However, therapeutic cloning had considerable scientific potential, provided that it was strictly regulated.

43. The draft resolution introduced by Belgium (A/C.6/59/L.8), of which Cuba was a sponsor, contained a viable, flexible and realistic proposal which would make possible scientific progress for the benefit of humanity with full respect for the integrity and dignity of the human person. She believed that there was a consensus on banning reproductive cloning and that it was urgent for the Committee to request the Ad Hoc Committee established under General Assembly resolution 56/93 to prepare a draft international convention against that practice.

44. **Mr. McIvor** (New Zealand) said that draft legislation prohibiting reproductive cloning was currently before New Zealand's Parliament. However, his Government was still considering the question of the use of cloning for therapeutic and research purposes; it planned to consult with scientists, ethicists and the public and was not in a position to prejudge the outcome of those consultations. For that reason, it was unable to support negotiations on a broader ban on cloning.

45. Any international legal instrument resulting from such negotiations would have value only if it was capable of receiving universal acceptance; moreover, the Committee had a longstanding tradition of action by consensus, which would be possible only if a graduated approach was adopted. He encouraged delegations to continue efforts to find such a solution during the current session.

46. **Ms. Morgan-Moss** (Panama) said that Panamanian law prohibited all forms of human cloning in the sense of creating an embryo that was a biological replica of a human being. Tissue for organ repair and other therapeutic purposes could be reproduced only from the umbilical cord of a newborn child or through any other scientific method developed solely for the benefit of a newborn child, its relatives or third parties with the consent of the person from whom the organic material was extracted or that person's legal representatives. Her delegation therefore supported the draft resolution introduced by Costa Rica (A/C.6/59/L.2).

47. **Mr. Jia** Guide (China) said that the past three years of unsuccessful deliberations had made the positions of all sides well known. His Government maintained its opposition to reproductive cloning and its support for therapeutic cloning; China had banned the former practice as counter to the laws of nature and a violation of human dignity whereas the latter, if properly regulated, had tremendous potential for saving lives and improving health.

48. The next logical step was the early conclusion of an international instrument embodying the existing consensus on banning the reproductive cloning of

human beings. His delegation had originally favoured an instrument that would ignore the question of therapeutic cloning; however, in the light of the concerns expressed by numerous countries, it had agreed to begin a separate consideration of ways of regulating therapeutic cloning once the convention against reproductive cloning had been concluded. In a major concession, it was now prepared to go one step further by withdrawing its objection to the inclusion of provisions on ways of regulating therapeutic cloning in a convention against reproductive cloning.

49. His delegation had taken that decision out of sympathy with some countries' concern that technology resulting from research into therapeutic cloning could be illegally applied to reproductive cloning and out of respect for the cultural, religious, ethical and moral specificities and customs of those countries. He urged all sides to rise above their differences in order to produce an outcome satisfactory to all.

50. **Mr. Dube** (Botswana), speaking on behalf of the States members of the Southern African Development Community (SADC) and the candidate country Madagascar, said he hoped that in the foreseeable future, the General Assembly would reach consensus on an international convention prohibiting all forms of reproductive human cloning, which was repugnant to all nations and an affront to human dignity. On the other hand, a case had been made within the scientific community concerning the need to consider the merits of research on embryos for therapeutic purposes.

51. While developing countries did not have the capacity for such research, they were committed to improving the lives of their people and were interested in the possibility that a cure for diseases such as Parkinson's and Alzheimer's and for spinal cord injuries could be found. In July 2004, African leaders had discussed the issue and had decided to instruct their Ministers of Health to meet and develop a common position on cloning.

52. At a special meeting in Pretoria on 2 and 3 August 2004, those ministers had considered the issues and processes involved: the moral, ethical and religious implications; the potential for economic exploitation of women; and the need for effective monitoring and regulatory frameworks. They had noted the challenges that the issue posed for developing countries and had approved the establishment of a standing committee of experts on human cloning for therapeutic purposes which would monitor the process globally; develop a legal, regulatory and policy framework and guidelines for the region; and ultimately become the SADC standing advisory body on the issue. That decision had been adopted by the SADC Council of Ministers, which would therefore refuse to be a party to any decision that would involve hasty action without measuring the potential benefits of cloning.

53. **Ms. Telalian** (Greece) said that draft resolution A/C.6/59/L.8 was a balanced and carefully drafted text that responded to the universal agreement on the need for a prohibition of the reproductive cloning of human beings, which posed a threat to human dignity. Indeed, any further delay in imposing such a prohibition could hinder the international community's efforts to prevent abuses.

54. The draft resolution did not advocate or encourage cloning for research or therapeutic purposes, nor did it exclude the possibility that a State might forbid all forms of human cloning. It took account of the legitimate diversity of views of a cultural, ethical, economic, scientific or religious nature. At the same time, it acknowledged that many countries imposed domestic standards to regulate and protect such practices, since, in their view, therapeutic cloning might prove beneficial to humankind, if carried out in an appropriate manner that fully respected human rights and values.

55. The draft resolution was also in line with developments at the regional level. The preamble to the Additional Protocol to the Council of Europe Convention on Human Rights and Biomedicine recognized that some cloning techniques might themselves advance scientific knowledge or its medical application. On that basis, some national bioethics committees, including that of her own country had interpreted the Protocol as providing that therapeutic cloning was exempt from the general prohibition of cloning for research purposes. Similarly, the draft resolution left it to individual States to decide whether or not to permit cloning for research or therapeutic purposes, at the same time emphasizing the need to establish a strict regulatory framework to eradicate any abuses. Independent committees comprising scientists, representatives of civil society and others should play a major role in dealing with the ethical issues involved, while the appropriate national bodies should be closely

associated in the process of authorizing and monitoring research activities.

56. Some form of international convention was urgently needed and she appealed to all delegations to demonstrate the necessary political will and flexibility to reach an acceptable solution. The draft resolution offered a realistic and feasible approach. Any other course of action would amount to no action at all, which would be regrettable.

57. **Mr. Kumalo** (South Africa) said that his delegation supported a ban on all forms of reproductive cloning of human beings and appealed to the Committee to adopt a resolution conveying the strong message that the United Nations was opposed to the practice. As for the issue of human cloning for therapeutic purposes, there was evidently a lack of knowledge among many countries, particularly within the African continent. South Africa had joined forces with the rest of the Southern African Development Community (SADC) in a quest for more information. The SADC Ministers of Health, meeting in August 2004, had decided to set up a standing committee of experts on human cloning for therapeutic purposes to advise them on how to proceed, as well as monitoring global trends and developing a regulatory and policy framework. In the meantime, he appealed for more time for deliberation. A decision that shut the door on future consideration of the issue should not be taken during the current session, in the hope that scientific research might offer the necessary answers on how to proceed. Although there was general agreement that reproductive human cloning should be banned, the Committee must remain sensitive to countries that were still gathering information on cloning for therapeutic purposes, which many argued held the hope of finding a cure or preventive treatment for cancer, Parkinson's disease, Alzheimer's disease, spinal cord injuries or HIV/AIDS.

58. **Mr. Chidyausiku** (Zimbabwe) drew the Committee's attention to the fact that agenda item 150 was entitled "International convention against the reproductive cloning of human beings". The discussion by some delegations of other types of cloning, including therapeutic cloning, strayed beyond the mandate allocated to the Committee.

59. A special briefing organized by the Permanent Mission of the Republic of Korea had thrown light on the remarkable medical possibilities offered by stem cell research and therapeutic cloning. Theoretically, stem cells could be used to grow replacement livers or hearts for transplant without fear of rejection by the body. They might even be used to create healthy nerve cells for people with Alzheimer's or Parkinson's disease. Skin cells could be derived from cloned healthy stem cells for the victims of severe burns.

60. While closer examination of the issue had shown that the cloning of humans for reproductive purposes was unethical, ungodly and undesirable, the fear of therapeutic cloning was akin to the alarm caused by the discoveries of Copernicus, the "heresy" of Luther or the first heart transplants by the South African surgeon Christiaan Barnard. His delegation's inclination would be to give therapeutic cloning a chance. Civilization would have achieved less than it had done if previous generations had stood in the way of scientific advances. The therapeutic potential of cloning human stem cells should surely be harnessed.

61. The meeting of the SADC Ministers of Health in August 2004 had expressed a clear and unanimous objection to human cloning for reproductive purposes but recommended the establishment of a standing committee of experts on human cloning for therapeutic purposes. More time for reflection and more research were needed before future generations were deprived of a potentially revolutionary medical discovery. The Committee should not be stampeded into a rash decision, nor should any decision on an issue of great importance be taken by ballot. Instead, the Committee should patiently build a broad consensus. His delegation therefore recommended that the issue should be deferred to the sixtieth session of the General Assembly.

62. *Mr. Dhakal (Nepal), Vice-Chairman, took the Chair.*

63. **Archbishop Migliore** (Observer for the Holy See) said that, despite the title of the agenda item, it appeared clear that the purpose of the proposed convention was to find a juridical framework that would permit and accelerate the advancement of the medical science in the procurement and use of stem cells, while identifying and banning practices that would be disrespectful to human dignity.

64. From a purely scientific point of view, the therapeutic progress already achieved with so-called adult stem cells, namely stem cells from bone marrow, core blood and other mature tissues, appeared

promising, whereas embryonic cloning was as yet far from delivering the progress claimed by its advocates. There had yet to be a definite clinical success using cloned embryonic stem cells, even in animal experiments, and the obstacles to safe experimentation on human beings with such cells might never be overcome.

65. The distinction sometimes drawn between reproductive and therapeutic cloning seemed specious. They involved the same technical procedure and both involved disrespect for the dignity of the human being. From an ethical and anthropological standpoint, the creation of human embryos with the intention of destroying them, even if undertaken with the goal of helping sick people in the future, seemed incompatible with respect for the dignity of the human being. Moreover, since cloned embryos would be indistinguishable from embryos created by in vitro fertilization and could regularly be implanted into wombs and brought to birth, it would be practicably impossible to enforce the prohibition of one type of cloning while permitting another.

66. Adult stem cell research should be pursued before embryos were cloned as a source for stem cells, an issue that remained problematic both scientifically and ethically. A distinction should be made between science that was ethically responsible and science that was not. There was solid scientific evidence that adult stem cell transplants were safe and that they could help people with Parkinson's disease, spinal cord injury, heart damage and many other conditions; yet the progress made would be halted or slowed down by the diversion of attention and resources towards the cloning of human beings as a potential source of stem cells.

67. A supranational body like the General Assembly, and the Committee in particular, was the proper forum for such deliberations, since the questions involved knew no boundaries and concerned the nature and existence of human life itself. The agenda item would be best addressed by a juridical instrument, since it was by the rule of law, based on right reason, that societies could regulate whatever appeared to challenge their fundamental notions of human life and dignity.

68. **Ms. Ikebe** (United Nations Educational, Scientific and Cultural Organization (UNESCO)) drew the Committee's attention to two UNESCO documents that were being made available to all delegations. One was a brochure entitled "Human Cloning: Ethical Issues", available in the six official languages of the United Nations, which provided information on cloning research as well as the ethical issues involved. The other document set out national legislation on human reproductive and therapeutic cloning. Produced in English and French, the document was regularly updated to provide Member States with information on regulations introduced in various countries. In that connection, she drew attention to the International Declaration on Human Genetic Data adopted by the General Conference of UNESCO at its thirty-second session, in October 2003. The Declaration focused on respect for human dignity. As the agency in the United Nations system entrusted with a mandate to work in the field of ethics, UNESCO was expected by Member States to set standards, which had resulted in the adoption not only of the Declaration but also, in 1997, of the Universal Declaration on the Human Genome and Human Rights. The General Conference had invited the Director-General to continue preparatory work on a declaration concerning universal norms on bioethics and to submit a draft declaration to the thirty-third session of the General Conference. Questionnaires had been sent out to States, non-governmental organizations and regional or intergovernmental organizations. With its experience in elaborating international texts relating to bioethical issues, UNESCO had the expertise to provide the Committee with assistance in elaborating an international convention against the reproductive cloning of human beings.

The meeting rose at 1 p.m.

United Nations A/C.6/59/SR.12

General Assembly
Fifty-ninth session

Official Records

Distr.: General
20 January 2005

Original: English

Sixth Committee

Summary record of the 12th meeting
Held at Headquarters, New York, on Friday, 22 October 2004, at 10 a.m.

Chairman: Mr. Bennouna ..... (Morocco)
later: Mr. Dhakal (Vice-Chairman) ..... (Nepal)

Contents

Agenda item 150: International convention against the reproductive cloning of human beings (*continued*)

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of publication* to the Chief of the Official Records Editing Section, room DC2-750, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

04-56671 (E)

The meeting was called to order at 10.20 a.m.

Agenda item 150: International convention against the reproductive cloning of human beings (*continued*) (A/C.6/59/L.2 and 8)

1. **Mr. Smid** (Slovakia) noted that, over the past three years, the Committee had failed to overcome the differences between the two main approaches to the complex and sensitive question of human cloning, although the scientific arguments on either side had become more elaborate and sophisticated.

2. His delegation, which favoured a consensual solution, supported a total ban on human cloning, whether for reproductive or for scientific or therapeutic purposes. That position was based on several principles. First, the Slovakian Constitution provided that human life deserved protection before birth. Secondly, under article 18 of the Council of Europe Convention on Human Rights and Biomedicine, the creation of human embryos for research purposes was prohibited. Embryos subject to in vitro research were adequately protected and in 1998 a total ban on human cloning had been introduced. An amendment to the Penal Code criminalized any intervention seeking to create a human being, at any stage of its development, that was genetically identical to another human being, whether living or dead.

3. The issue of human cloning was relevant to every individual and every State. The approach taken by the international community to the ultimate moral questions would have substantial consequences for humanity and could not be confined within State borders. Thus, while appreciating every effective and constructive proposal towards a compromise solution, his delegation would strongly prefer a comprehensive international legal framework that would ban all kinds of human cloning, as proposed in draft resolution A/C.6/59/L.2.

4. **Mr. Tachie-Menson** (Ghana) said that, faced with a highly sensitive and controversial subject involving scientific, legal, ethical, religious and political concerns, the Committee should adopt a dispassionate and objective approach, while remaining mindful of the consequences whichever way it decided. For his delegation, the dignity of human life was not negotiable; human life must be protected from any measure or process that reduced it to the level of an inanimate object. Medical science and research must be undertaken within the context of the guarantees provided by the Universal Declaration of Human Rights. It was therefore gratifying to note the strong consensus against reproductive, as distinct from therapeutic, cloning.

5. The available evidence clearly indicated the exciting possibilities offered by stem cell research. While it was impossible to legislate against knowledge or innovative thinking, it might be possible to draw up a legal and institutional framework to protect society against abuses of knowledge. The international community must therefore consider the crucial question of the point at which an embryo became a human being, entitled to all legal and ethical safeguards.

6. Even if therapeutic cloning did not involve embryos more than seven days old, that cluster of cells might nonetheless be a life form that should be protected. Until practicable guidelines on the viability of a new embryo and its capability of responding to stimuli were developed, progress in the field would continue to be held hostage to the protests of sceptics or zealots. The Committee should adopt a balanced approach that would safeguard the freedom of medical science to continue responsible research.

7. **Mr. Hmoud** (Jordan), after aligning his delegation with the statement made on behalf of the Organization of the Islamic Conference, said that the Committee's efforts to fulfil its mandate under General Assembly resolution 56/93 had been hampered by efforts to reverse that mandate and to prevent the reconvening of the Ad Hoc Committee established by the resolution. That approach did not take into consideration the differences in cultures and priorities among nations. Despite the fact that there was a consensus on banning reproductive cloning, some delegations wished to sacrifice that consensus and leave the door open for uncontrolled scientific practices leading to the eventual cloning of human beings.

8. Both sides claimed that "scientific and factual evidence" supported their point of view. That, however, only went to prove that scientific truth was not a monopoly; and the same applied to morality. Fortunately, many of the delegations that would prefer a total ban on all forms of human cloning accepted that other nations could not be compelled to act against their national interests and ban embryonic stem cell

research. They understood that an effective international instrument should be based on consensus. The current state of affairs indicated that such consensus could apply to a legal instrument against reproductive cloning but not to one against all forms of human cloning. Indeed, the latter would lead to unsupervised, uncontrolled scientific research involving practices of which the international community disapproved. The claim that therapeutic cloning as such did not exist and that a total ban was therefore the only solution defied scientific logic, in that it sought to impose its own understanding of the meaning of life and the time at which life started, which was irrelevant to the legal task before the Committee.

9. His delegation therefore supported a total ban on reproductive cloning by means of a legal instrument which also gave States the option to exercise their discretion and decide how to deal with other forms of cloning on the national level. Such an approach would be more effective in banning reproductive cloning, while respecting differences of opinion and allowing States to act in accordance with their national interests. His delegation was also, however, in favour of a consensual solution, otherwise there was a risk of stalemate in the negotiation of the draft convention. His delegation was therefore open to discussing other approaches.

10. **Ms. Thoma** (Cyprus) said that the issue of human cloning, whether for reproductive or therapeutic purposes, raised ethical and scientific as well as legal questions that, as the debate showed, could be approached in a number of divergent ways. Her delegation regretted the division of the Committee on a sensitive issue which prevented it from elaborating an international convention enjoying universal support.

11. Cyprus had adopted binding legislation to implement the first Additional Protocol to the Council of Europe Convention on Human Rights and Biomedicine, which prohibited the cloning of human beings for reproductive purposes. At the international level, it took into full consideration the legal instruments elaborated by the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO), the United Nations Commission on Human Rights and the Council of Europe. It fully supported an international convention banning the reproductive cloning of human beings. Draft resolution A/C.6/59/L.8 adopted a realistic approach in that, while it provided for a prohibition on the reproductive cloning of human beings, it left to States the decision on whether to ban therapeutic cloning or to regulate it strictly. While her delegation respected the concerns of the sponsors of draft resolution A/C.6/59/L.2, it believed that an international convention on human cloning should be elaborated as a matter of urgency. Otherwise, there was a risk that unethical and illegal practices would persist. She urged delegations to explore ways of reaching consensus so that a vote could be avoided.

12. **Mr. Awanbor** (Nigeria) said that, although there appeared to be general agreement on the need to ban the reproductive cloning of human beings, strenuous efforts were being made by some delegations to justify therapeutic cloning on the grounds of its potential health benefits. That reasoning was incomplete, since it gave the misleading impression that reproductive and therapeutic cloning were mutually exclusive. In fact, the same techniques were used in both cases, up to the point at which the cloned single-cell embryo was either implanted in the womb or destroyed to harvest its embryonic stem cells for experiments. In both cases, human embryos were used. The arguments about the progress made in biotechnology were skewed, since they continued to ignore the dehumanizing technique of embryonic stem cell extraction. It was morally and ethically wrong to destroy life — that of the living human embryo — in order to save life.

13. The manner in which scientific research was pursued could not be a morally neutral undertaking. In his delegation's view, the thin line separating therapeutic and reproductive human cloning did not support the argument for only a partial ban. There was also a need to be circumspect, because most biotechnology advocates were as much "academic entrepreneurs" as they were objective scientists and their resistance to the regulation of biotechnology might be strongly influenced by personal financial considerations.

14. Developing countries, particularly in Africa, were most likely to be at risk as easy sources of the millions of embryos required for so-called therapeutic cloning. Owing to the prevalent poverty and ignorance, women in developing countries, especially young girls, would be exposed to exploitation, which would compound the problems caused by moral decadence and social and demographic flux in such countries.

15. It was gratifying to note that the arguments in favour of a total ban on all forms of human cloning had gained wider acceptance among delegations and his delegation remained optimistic that efforts would be made to overcome differences. He urged the delegations to support draft resolution A/C.6/59/L.2 in order to move the negotiation process forward.

16. **Ms. Bahemuka** (Kenya) said that human cloning, for whatever purpose, was totally unacceptable to her delegation. The end result of any cloning process was the creation or reproduction of a human embryo. The only question was what was done with that embryo: whether it was destroyed to harvest its stem cells for experimental purposes or implanted into a womb. The embryo created during the cloning process was a living being, not just a cluster of undefined cells. To create a human embryo with the sole purpose of destroying it in order to harvest tissue was abominable.

17. Not only did the advocates of therapeutic cloning fail to address the complex ethical and moral issues involved but, after several decades of research, all that they had proved was that clones were beset with such severe genetic abnormalities that they should not be allowed to develop into mature human beings. She wondered how such inherently defective cells could be expected to remedy genetic defects in the human body.

18. There were, in any case, viable alternatives to cloning that were less objectionable. Proponents of therapeutic cloning claimed that the choice was between such cloning or letting patients die. Adult stem cell research, however, had considerable potential in regenerative medicine and raised no difficult ethical or moral questions.

19. In order to ensure a supply of the enormous number of human eggs needed, disadvantaged women desperate to earn a living were likely to be targeted. Entrepreneurs had already contacted young women to donate eggs for a small fee. That was an insult not just to women but to the human race as a whole.

20. The compromise proposed in draft resolution A/C.6/59/L.8 was thus no real compromise. The recognition that therapeutic cloning required strict regulation was in itself an acknowledgement of the risk for potential abuse. The cloning of human beings could not be left to the whims of States but must be subordinate to the decision of the United Nations. Her delegation, therefore, sought a total ban on human cloning. Decisive action should be taken on draft resolution A/C.6/59/L.2, without further prolongation of the debate, for the sake of human dignity and human rights. Should the draft convention be adopted, States that felt strongly could still exercise their sovereign right not to become parties to it.

21. **Mr. Acosta Bonilla** (Honduras) said that science could not fly in the face of the fundamental moral principles of human society. While it was imperative to alleviate human suffering, morality should not be sacrificed to financial considerations. In many respects, technological advances had become dissociated from human well-being, as was evidenced by the number of children still dying from hunger.

22. The law protected human rights and so it was wrong to destroy embryos or to use them for scientific research. The subject should be reconsidered in the light of the Universal Declaration on the Human Genome and Human Rights and indeed more thought should be given to the whole topic. In the meantime, human cloning should be completely prohibited until all countries could agree on a common set of values. His Government would therefore vote in favour of draft resolution A/C.6/59/L.2.

23. **Mr. Navoti** (Fiji) endorsed draft resolution A/C.6/59/L.2 introduced by Costa Rica. There was good reason to fear that if a convention banning all forms of cloning were not adopted in the very near future, given the rapidity of scientific advances, it would not be long before a cloned human baby made its appearance. Since consensus was proving elusive, there appeared to be no alternative to holding a vote, which would further polarize the issue.

24. **Mr. Spatafora** (Italy) said that his Government was seeking a total ban on human cloning and therefore supported the draft resolution introduced by Costa Rica (A/C.6/59/L.2). The line drawn between reproductive and therapeutic cloning was a false distinction. "Therapeutic" cloning normally meant that human embryos were created for the express purpose of scientific experimentation, after which they were discarded and thus denied the possibility of becoming human beings. On the other hand, the use of adult stem cells had proved successful in the fight against many diseases.

25. The failure of experiments using human embryos suggested that the supporters of therapeutic cloning should adopt a more cautious approach. There was no reason why scientific progress should be made at the

expense of human dignity. Another element for consideration was European Parliament resolution 2003/2049 on relations between the European Union and the United Nations, which had been passed with a huge majority and which called for a worldwide ban on human cloning.

26. **Mr. Eriksen** (Norway) said that respect for the inviolability of life and for principles based on the equal value of all human beings motivated his Government's opposition to reproductive and therapeutic cloning and its support for the draft resolution introduced by Costa Rica (A/C.6/59/L.2).

27. **Mr. Abdelsalam** (Sudan) said that although consensus was hampered by a plethora of interrelated issues, he was optimistic that political, legal and scientific divergences could be overcome. His Government was opposed to both reproductive and therapeutic cloning. Although the use of therapeutic cloning might be motivated by good intentions, science should be based on faith and ethics as well as utility and bounded by moral restrictions. A cautious dialogue should therefore be initiated with a view to arriving at a consensus.

28. **Mr. Haji Dollah** (Malaysia) said that a distinction must be drawn between therapeutic and reproductive cloning. Reproductive cloning should be banned on moral and ethical grounds and also for practical reasons, since animal clones had been malformed or unhealthy. Therapeutic cloning, on the other hand, could potentially solve many medical problems and might significantly reduce the risks inherent in other stem cell therapies. It must, however, be regulated and the results of therapeutic cloning research must not be allowed to advance reproductive cloning. While caution over therapeutic cloning was warranted, a promising avenue of scientific inquiry should not be closed because of justified fears regarding reproductive cloning. The whole issue needed to be addressed in a calm and rational manner with all due consideration being given to scientific, moral, ethical, political and legal aspects. It was to be hoped that the Committee would one day reach consensus allowing it to make progress on the subject.

29. **Mr. Lidén** (Sweden) said that reproductive cloning must be banned because it was contrary to the dignity of human beings, but other forms of human cloning should be regulated nationally. The draft resolution on an international convention against the reproductive cloning of human beings (A/C.6/59/L.8) therefore represented the common denominator on which all States could agree. Although stem cell research was still at an early stage of development, it offered great potential as a source of new treatments for serious and hitherto incurable diseases. That quest for knowledge must be promoted, not prevented. The international research community agreed on the whole that scientific research was valuable per se and served a vital purpose in society, but that it must always be carried out within ethical boundaries.

30. An ethical discussion of stem cell research must therefore strike the right balance between different values, principles and interests. One way of ensuring that was done was to require that research projects in ethically sensitive areas be scrutinized at the national level by independent ethical committees, an approach that many countries had adopted.

31. **Mr. Boonpracong** (Thailand) said that reproductive cloning must be banned since it was a practice that violated human dignity. If, however, embryonic stem cell research were closely regulated to prevent misuse, therapeutic cloning might offer significant potential for curing diseases.

32. While his Government had not adopted any legislation dealing with the matter, the Medical Council had issued a regulation which prohibited the reproductive cloning of human beings, and the National Centre for Genetic Engineering and Biotechnology and the National Public Health Foundation had published guidelines which imposed certain conditions on researchers who wished to obtain a grant to conduct human stem cell research.

33. Conflicting religious, moral or ethical views should not hinder international efforts to prohibit reproductive cloning, but any international convention should leave it to each Member State to decide whether therapeutic cloning should be allowed or forbidden in its territory. If permitted, however, therapeutic cloning should be regulated in such a way as to prevent its results from being used to advance reproductive cloning.

34. In view of the evident lack of knowledge about the issue of human cloning, it would be useful if the Secretariat were to compile information about national laws and regulations on human cloning and distribute it to all Member States.

35. **Mr. Kanu** (Sierra Leone) said that his delegation was one of the sponsors of draft resolution A/C.6/59/L.2 and endorsed the statement made by Costa Rica when introducing it. The issue was urgent, because what was at stake was the integrity and dignity of human beings, a principle on which the foundations of the United Nations rested. His delegation was in total agreement on the need to ban the reproductive cloning of human beings but strongly believed that other forms of cloning should not be encouraged or supported. In essence, all cloning was reproductive, since it created a human embryo, which could potentially result in a live birth or could be destroyed for its stem cells. Sierra Leone was not against the advancement of scientific research to find cures for serious illnesses, but surely that could be done in other ways than through the destruction of human embryos.

36. The developed world might be able to put in place mechanisms that would ensure that therapeutic cloning was not misused, but in poor countries without that capacity there was a risk that women would be exploited to satisfy the intellectual curiosity and scientific whims of richer States.

37. Another valuable feature of draft resolution A/C.6/59/L.2 was that it encouraged States, in paragraph 5, to direct funds that might have been used for human cloning technologies to pressing global issues in developing countries, such as poverty eradication.

38. **Mr. Much** (Germany) said that his country's position was clear: its laws prohibited all forms of cloning, and his delegation would prefer that that should become the worldwide standard. Recent developments had shown that international regulations on human cloning were urgently needed. However, Germany was committed to the idea that consensus was the only way to achieve a universally binding instrument on a key question of international bioethics and of human rights and human dignity. For that reason his delegation believed that it would not be right to seek a solution by voting, and it appealed to the Committee, its Bureau and the sponsors of the two opposing draft resolutions to make every effort to reach consensus.

39. **Mr. Abebe** (Ethiopia) said that his delegation, a sponsor of draft resolution A/C.6/59/L.2, fully endorsed the statement made by Costa Rica when introducing it. Destroying human embryos, even for research and medical purposes, was nonetheless destroying human life and was a crime. Those who supported the opposing draft resolution (A/C.6/59/L.8) were in favour of the mass cloning and killing of human embryos and would ban only the implantation of such embryos in a woman's womb. His delegation could not support a norm that made the very basis of human life an object of experimentation. The international community had two choices: it could allow science to regulate life, or it could regulate science to better human life, while ensuring respect for the inherent dignity and worth of human beings. His delegation also strongly supported paragraph 5 of draft resolution A/C.6/59/L.2, which encouraged States to direct money that would otherwise be spent on cloning research to other pressing global issues.

40. **Ms. Sarne** (Philippines) said that her delegation fully supported draft resolution A/C.6/59/L.2 and reaffirmed its position that a comprehensive ban on human cloning was the only viable approach for the United Nations. Therapeutic cloning might be pursued for altruistic aims, in order to find cures for debilitating diseases, but it did so at the expense of human life, since the process involved the destruction of the cloned human embryo once the stem cells had been harvested. She wished to underscore that the technology for therapeutic cloning was the same as for reproductive cloning. The proposed solution under draft resolution A/C.6/59/L.8 would have the undesirable result of perfecting the very same cloning technology that could be used to produce cloned babies. Moreover, if research cloning were permitted, it would be merely a matter of time before millions of cloned human embryos were produced in laboratories, and no amount of regulation would be able to prevent at least one of those cloned embryos from being implanted in a woman's womb and developing into a baby.

41. In the past year a number of countries had passed laws regulating the practice of therapeutic cloning, and the world was being asked to respect the sovereign will of States in that regard. However, her delegation was unwilling to subordinate human dignity to the unproven medical benefits that might be derived from therapeutic cloning. The difference between the two draft resolutions proposed was evident: A/C.6/59/L.2 sought to ban human cloning, whereas A/C.6/59/L.8 allowed it to be practiced.

42. **Ms. Katungye** (Uganda) said that her delegation aligned itself with the statement made by Costa Rica in

introducing draft resolution A/C.6/59/L.2. There appeared to be no doubt that therapeutic cloning involved the same technical process as reproductive cloning. If it were permitted, there would be no guarantee that scientists would not perfect the art to the point that they could clone human beings with relative ease. Moreover, embryonic stem cell research for therapeutic purposes entailed the creation of human embryos to be killed in order to better another person's life. That sacrifice was unconscionable, because one life was not worth more than another. An embryo was a human being in the earliest stages of formation, it was not an object and should not be used or destroyed for scientific experiments or traded as a commodity. Furthermore, embryonic stem cell research and use was contrary to the Universal Declaration on the Human Genome and Human Rights. Therefore, out of respect for the sanctity of life and the dignity of mankind, her delegation supported a ban on all forms of cloning based on embryonic stem cells.

43. Some had said that those calling for a total ban were standing in the way of science. However, draft resolution A/C.6/59/L.2 called for the promotion of scientific and technical progress in the fields of biology and genetics in a manner respectful of human rights. Moreover, not a single human being had yet benefited from embryonic stem cell research, whereas thousands had already benefited from the use of adult stem cells, which raised no ethical or moral difficulties.

44. The members of the Committee could not afford to walk away without some kind of outcome to prove their commitment to ending the existing deadlock. However, a call for a vote was not the solution. They must reach a compromise that could serve as a stepping stone to a convention that would ban all forms of cloning inconsistent with the dignity of mankind.

45. **Ms. Moore** (United States of America) said that her delegation was a sponsor of draft resolution A/C.6/59/L.2 introduced by Costa Rica, because it strongly supported a ban on all cloning to create human embryos, whether for reproductive, therapeutic, research or experimental purposes. The process of somatic cell nuclear transfer, or cloning, involved the laboratory production of a human embryo with the precise genetic makeup of another individual. In reproductive cloning, the embryo would be implanted into a woman's womb. In therapeutic or experimental cloning, the embryo would be destroyed for research purposes. A ban differentiating between the two would essentially authorize the creation of a human embryo for the purpose of destroying it, thus elevating the value of research and experimentation above that of a human life and turning nascent human life into a commodity to be exploited. For that reason, a partial ban was unacceptable to the United States and many other countries. Furthermore, experimental cloning had the potential to cause exploitation of women, particularly poor women, because it might create an incentive to donate eggs for financial gain.

46. There were many routes to developing therapies and cures that did not pose the same threat to human dignity as cloning of human embryos. Her delegation therefore fully supported the proposal in draft resolution A/C.6/59/L.2 for an ad hoc committee to prepare a convention banning all cloning of human embryos. The international community must act immediately to send a clear message that human cloning was an affront to human dignity that could not be tolerated.

47. **Mr. Meléndez-Barahona** (El Salvador) said that his delegation was by no means opposed to scientific progress intended to improve the human condition, particularly medical research aimed at finding cures or treatments for disease, but such research must be conducted in a manner consistent with human dignity. El Salvador agreed with those countries that had expressed concerns about human cloning for either reproductive or therapeutic purposes. For that reason, his delegation was a sponsor of draft resolution A/C.6/59/L.2 and aligned itself with the introductory statement made by Costa Rica, which called as a matter of urgency for the preparation of the draft text of an international convention against human cloning. Until such time as an international convention existed, his delegation would urge all States to take their own measures to prohibit all activities aimed at human cloning.

48. *Mr. Dhakal (Nepal), Vice-Chairman, took the Chair.*

49. **Ms. Nguyen Thi Van Anh** (Viet Nam) said that there was an urgent need to ban reproductive cloning through an international legally binding instrument. However, while her delegation respected the opinions of both groups, it believed that the future international instrument should not close the door to therapeutic cloning if States wished to engage in it, provided that strict controls were in place to prevent abuses. The

Committee should make every effort to reach consensus on its recommendation to the General Assembly.

50. **Mr. Grey-Johnson** (Gambia) stressed that while the ultimate aim of all science was the well-being of mankind, the pursuit of science must be based on absolute respect for human life. Despite efforts to blur the line between reproductive and therapeutic cloning, both led to the deliberate interruption of the natural development of one life for the sake of saving another. Adult stem cell research, on the other hand, was ethical and had great and proven potential.

51. His delegation supported the elaboration of a convention that would comprehensively ban human cloning; however, he cautioned against hasty action that might divide the world on such an important and sensitive issue or lead to an agreement that would prove unenforceable. Dialogue should be continued until a wider consensus could be reached.

52. **Mr. de Câmara** (Timor-Leste) said that his delegation was among the sponsors of the draft resolution introduced by Costa Rica (A/C.6/59/L.2). His Government fully supported adult stem cell and umbilical stem cell research, which had yielded promising benefits, but it was opposed to all forms of human cloning; while that process created one life in order to save or prolong the life of another, it also destroyed life. The process was the same for both reproductive and therapeutic cloning and it was the process itself that his delegation challenged on ethical grounds.

53. Having acceded to the Convention on the Elimination of All Forms of Discrimination against Women as one of its first acts on attaining statehood, Timor-Leste was deeply concerned about the status and advancement of women. Like all forms of exploitation, human cloning would have a more negative impact on women in the developing world. It was, however, important not to overstate the need for protection, which would border on the patronizing.

54. While it was important to achieve consensus on issues of fundamental importance to humankind, consensus on human cloning was unlikely. Moreover, both developed and developing countries, encompassing different religions and faiths, supported the draft resolution on the prohibition of all forms of human cloning (A/C.6/59/L.2). He appealed to all delegations to decide the matter on its merits.

55. **Mr. Gómez-Robledo** (Mexico) said that decisions on such a sensitive topic should be based on scientific evidence and respect for human dignity and should be aimed at developing an effective, universal legal regime. There appeared to be a consensus on banning reproductive cloning; his delegation therefore supported the preparation of a convention that would prohibit that practice and establish internationally agreed criteria to be used by States in regulating or prohibiting therapeutic cloning.

56. It was important to avoid creating a legal vacuum as well as the proliferation of competing or contradictory instruments. He therefore urged States to continue to seek consensus, which could not be achieved by asking the other party to abandon its convictions, but only through mutual respect and the effort to find common ground. A hasty decision taken through a vote would not achieve results acceptable to all delegations and would greatly reduce the possibility of adopting a realistic, universal convention. Moreover, the scientific, moral, ethical and legal aspects of the problem must be considered.

57. His delegation therefore proposed that the Ad Hoc Committee should be convened with an initial mandate to establish a multidisciplinary expert group that would consider all aspects of human cloning and submit its results within a certain time period. On the basis of those results, the Ad Hoc Committee should make proposals to the General Assembly regarding the terms of reference for its own negotiating mandate. Negotiations leading to a comprehensive convention should then begin immediately.

58. **Mr. Thiam** (Senegal) said that while there was no need to choose between science and ethics, a legitimate concern for human dignity must accompany scientific progress. A decision to permit cloning while regulating it would place a heavy burden on legislators. Despite rapid progress in some fields of science, biomedical research was not yet able to achieve results without the large-scale destruction of human embryos. It would be a mistake to respond to that problem, no doubt a temporary one, by authorizing a practice that would cause great harm to humankind; it would be preferable to encourage research into other, more promising therapies. For those reasons, his delegation supported only cloning techniques which in no way involved the creation and destruction of human embryos and was in favour of banning all forms of human cloning, whatever their purpose. Senegal

nonetheless believed that every effort should be made to reach consensus on the matter in the long-standing tradition of the Committee.

59. **Ms. Matsuo de Claverol** (Paraguay) associated herself with the statements made by the other sponsors of the Costa Rican draft resolution (A/C.6/59/L.2). Paraguay's Constitution enshrined the right to life, beginning at conception, and she hoped that it would soon be possible to adopt an effective international instrument protecting that right. Human cloning, whatever its purpose, was unethical and incompatible with respect for human dignity. Further efforts should be made to arrive at a consensus on preventing scientific experimentation conducted at the expense of human lives.

60. **Mr. Solórzano** (Nicaragua) said that his delegation was in favour of a total ban on all forms of human cloning as a violation of the right to human conception by a man and a woman. Even therapeutic cloning, however promising as a contribution to medicine, was too likely to be used for other purposes that would raise ethical, moral and religious concerns. His delegation was not opposed to progress in science, including in the field of genetics, but human cloning was not the only form of biogenetic research.

61. **Ms. Barnes** (Observer for the Sovereign Military Order of Malta) said that her Order had served others for many centuries, particularly in the areas of health care and humanitarian aid, and was thus well qualified to understand the concerns raised by the issues of cloning. In accordance with the Universal Declaration of Human Rights, the Order was committed to the right to life, including the right to be born, the right to proper health care and the right to a dignified death. It was keenly interested in the great potential of accelerated adult stem cell research and treatment, but it supported Costa Rica in calling for an international convention against human cloning.

The meeting rose at 1.05 p.m.

United Nations A/C.6/59/SR.13

General Assembly
Fifty-ninth session
Official Records

Distr.: General
22 March 2005
English
Original: Spanish

Sixth Committee

Summary record of the 13th meeting
Held at Headquarters, New York, on Monday, 25 October 2004, at 10 a.m.

Chairman: Mr. Bennouna ..... (Morocco)

Contents

Agenda item 149: Scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel (*continued*)

Agenda item 160: Observer status for the Organisation of Eastern Caribbean States in the General Assembly

Agenda item 142: Convention on jurisdictional immunities of States and their property

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of publication* to the Chief of the Official Records Editing Section, room DC2-750, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

04-56930 (E)

The meeting was called to order at 10.15 a.m.

Agenda item 149: Scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel (*continued*) (A/59/52 and A/59/226; A/C.6/59/L.9)

1. **Mr. Kupchyshyn** (Ukraine) said that his country attached great importance to the safety of United Nations and associated personnel. In view of the increasing number of losses among the peacekeeping forces, there was an urgent need to strengthen the legal regime of protection for those in the service of the United Nations. As a troop contributor, Ukraine had experienced the bitterness of human losses among its peacekeeping personnel. The adoption in 1994 of the Convention on the Safety of United Nations and Associated Personnel had been an important step forward. As one of the initiators of the Convention, Ukraine advocated its universal application and called upon all Member States to abide strictly by its provisions.

2. It was important to provide adequate protection to personnel engaged in operations other than those specifically authorized by the Security Council or the General Assembly for the purpose of maintaining or restoring international peace and security. Such personnel were often deployed in highly dangerous situations but remained outside the scope of the existing legal protection. Consideration must continue on ways of ensuring automatic application of the Convention to personnel in all United Nations operations. Ukraine was prepared to participate actively in the elaboration of an appropriate legal instrument on the basis of practical proposals submitted to the Sixth Committee and the Ad Hoc Committee on the Scope of Legal Protection under the Convention on the Safety of United Nations and Associated Personnel.

3. The Secretary-General was to be commended for the efforts to incorporate key provisions of the Convention into status-of-forces and status-of-mission agreements. Ukraine supported that practical approach, taking into account the small number of States parties to the Convention in whose territories United Nations missions were deployed.

4. **Mr. Amayo** (Kenya) said that United Nations and associated personnel could not effectively perform their crucial role in the maintenance of international peace and security unless their protection and safety were ensured. Kenya therefore welcomed and supported initiatives aimed at strengthening the protection and safety of United Nations and associated personnel and in particular the work of the Ad Hoc Committee on the Scope of Legal Protection under the Convention on the Safety of United Nations and Associated Personnel. Although no agreement had been reached on the extent of that enhancement and the means to achieve it, it was encouraging to note that the work was still on track. Kenya urged delegations to display flexibility and objectivity, particularly with regard to the definition of United Nations operations contained in draft article II of the proposed protocol (A/C.6/59/L.9, annex I). What was needed was a provision that could be applied with objectivity and certainty and whose scope of application was wide enough to encompass the vast scope of operations undertaken by United Nations and associated personnel.

5. In regard to paragraph 2 of draft article II, Kenya was the host country for permanent United Nations offices and for a number of United Nations missions engaged in various humanitarian assistance and development programmes at the national and regional levels. Some of those missions worked closely with the staff of the permanent offices. It was therefore difficult to draw a sharp distinction between the activities of the two sorts of personnel and to determine which set of personnel was excluded from the scope of application of the draft protocol. As a result, clear guidelines for making such a distinction would have to be incorporated into the draft protocol.

6. Effective protection of United Nations and associated personnel depended on the commitment of States to implement the Convention on the Safety of United Nations and Associated Personnel. As a demonstration of support for the Convention, his Government had deposited its instrument of accession on 19 October 2004 and would continue to work with other States to ensure the implementation and strengthening of the Convention.

7. Kenya welcomed the introduction of core provisions of the Convention into recently concluded status-of-forces and status-of-mission agreements. That in itself demonstrated that a "declaration of exceptional risk" was unnecessary. In view of the absence of agreed criteria for determining whether a situation of exceptional risk existed, Kenya concurred with the

recommendations contained in the report of the Secretary-General (A/59/226) that the need for such a declaration should be dispensed with.

8. **Ms. Crowley** (Canada) said that her country was concerned at the attacks and acts of violence against United Nations and associated personnel and believed that more should be done to ensure their security and bring the perpetrators to justice. The time had come to make concrete progress on the development of an additional protocol to the 1994 Convention on the Safety of United Nations and Associated Personnel. Her delegation therefore urged States that had not yet done so, in particular those hosting United Nations missions, to become parties to the Convention.

9. It was also noteworthy that in cases where host countries were not signatories to the Convention they had concluded status-of-forces and status-of-mission agreements that incorporated key provisions of the Convention. However, those and other short-term measures were of limited efficacy.

10. Canada agreed with the Secretary-General that the difficulty in the issuance of a declaration of exceptional risk was the single most important limitation to the protective regime of the Convention. The Secretary-General had recommended that such a declaration should be issued in the case of United Nations operations in Afghanistan (A/58/187, para. 22). But nothing had been done about it, despite the attacks on United Nations personnel in that country. The General Assembly and the Security Council must take responsibility in that regard.

11. Canada fully endorsed the conclusions and recommendations contained in the report of the Working Group, especially the recommendation that the Ad Hoc Committee established pursuant to General Assembly resolution 56/89 of 12 December 2001 should be reconvened with a mandate to expand the scope of legal protection under the Convention by means of a legal instrument. The time had come to extend the scope of application of the Convention to as broad a range of United Nations operations as possible in order to make maximum use of the legal protections available and to resolve the question definitively. Specific measures should be adopted to enhance the safety of United Nations and associated personnel and to hold accountable those who perpetrated attacks against them. Canada was ready to work with other delegations to resolve the remaining issues with the hope that consensus could soon be reached.

12. **Mr. Playle** (Australia), welcoming the progress made in ensuring the safety of United Nations and associated personnel, emphasized that more must be done to ensure that such personnel operated in a secure environment. Australia supported all efforts to strengthen the safety and security of United Nations and associated personnel, both at Headquarters and in the field.

13. The Working Group's decision to adopt the Chairman's text of the draft optional protocol as the basis for the work of the Ad Hoc Committee (A/C.6/59/L.9, para. 8) was the best way to proceed towards the conclusion of a protocol that would establish a more effective legal basis for the protection of United Nations and associated personnel. The next step was to reach an agreement on substantive textual proposals for individual articles of the protocol, so as to extend the scope of protection under the Convention. During the discussions held so far, many proposals had been submitted regarding the most contentious articles of the draft protocol. Differences remained, particularly on the scope of operations to be included in article II, paragraph 1. Australia supported extending the automatic application of the Convention to the broadest range of United Nations operations. Recognition of the risk involved in a particular mission should be by reference to its purpose rather than the specific situation in which it was established. Accordingly, Australia supported alternative A in article II, paragraph 1 (A/C.6/59/L.9, annex I).

14. The language in article III of the draft protocol would also need further consideration. It would be preferable to use language which would make it clear that a host State could exercise jurisdiction over any member of United Nations or associated personnel where expressly permitted to do so in conformity with articles 4 and 8 of the Convention. The Ad Hoc Committee should meet again in early 2005 to continue its discussion of those and other articles.

15. Australia called upon all States to continue to work together to ensure protection and security for United Nations operations in the field. It welcomed the Secretary-General's efforts to review existing security arrangements, as well as the work of the United Nations Security Coordinator to strengthen safety and security for United Nations offices and personnel in the

field. To that end, Australia supported the allocation of appropriate and reasonable resources to ensure security for United Nations operations and would take the matter up in the Fifth Committee.

16. **Mr. Thapa** (Nepal) concurred with other speakers as to the need to provide adequate legal protection to United Nations and associated personnel in the field, given the prevailing risk situation. As a State party to the Convention, Nepal was committed to undertake necessary measures in that regard. The Convention should be fully applied, and the international community must make greater efforts to make it universal. As the United Nations was engaged in a wide variety of missions, it was necessary to find ways to protect personnel involved in political missions and post-conflict peacebuilding offices, as well as humanitarian, development and human rights missions. The Convention should be applied to all operations established by the competent organs of the United Nations.

17. As a troop-contributing country, Nepal held that arrangements should be made for such countries to assess the security situation of the host country before the deploying forces. It also shared the concerns about attacks and crimes committed against locally recruited United Nations personnel and fully supported measures to increase their protection. Perpetrators of such crimes must be brought to justice.

18. The General Assembly, in resolution 57/28 of 19 November 2002, provided for status-of-forces, status-of-mission and host country agreements for the purpose of protecting United Nations and associated personnel. Those instruments would help in addressing the issue of personnel not covered by the Convention. Accordingly, Nepal urged the Secretary-General to continue his efforts with respect to those agreements.

19. On the question of exceptional risk, the declaration by the General Assembly or Security Council, which should constitute the basis for the trigger mechanism, should include measures to address exceptional risk, both actual and potential. Exceptional risk must be defined in a situation-specific manner.

20. With respect to the approval of an optional protocol to extend the scope of the Convention, New Zealand's proposal had provided a sound basis for discussion. The protocol should neither amend the Convention nor alter the balance struck therein with regard to protection of United Nations personnel. Any amendment to the Convention should be undertaken by the meeting of the States Parties thereto. Any State wishing to become a party to the protocol must also become a party to the Convention, which would help to strengthen the protective regime and promote universal accession to the Convention.

21. **Mr. Kanu** (Sierra Leone) said that extension of the scope of protection under the Convention was a cornerstone of United Nations operations. He recognized the need for the Convention to become effective, in view of the intensification of attacks on United Nations personnel.

22. Sierra Leone was pleased to note the inclusion of provisions of the Convention in status-of-forces and status-of-missions agreements between the United Nations and States in whose territories peacekeeping operations were deployed; it hoped that such measures would strengthen the legal regime for protection of United Nations and associated personnel. Countries must cooperate on extending the scope of the Convention and adopting effective measures for the prosecution of those responsible for crimes against United Nations and associated personnel. The Special Court for Sierra Leone had made attacks on peacekeeping personnel a crime under international law. Sierra Leone encouraged all States to become parties to the Convention and hoped that the elaboration of an optional protocol would contribute to the attainment of that goal.

23. His delegation noted with satisfaction the elimination of the requirement of a declaration of exceptional risk. The Secretary-General had also expressed reservations about such a requirement on account of the lack of generally accepted criteria for such a declaration. That decision showed the willingness of all delegations to find common ground and achieve an effective protective regime.

24. The discussions in the Working Group revealed that maintenance of the element of risk continued to be a key issue. Alternative A of the Chairman's text, according to which the purpose of an operation would be "delivering humanitarian, political or development assistance", clearly included an element of risk. Nevertheless, Sierra Leone was open to other ways of defining risk, provided that they were not too restrictive. Definitions that were too restrictive could have serious consequences for locally recruited United Nations personnel, who often bore the greatest risks, as

indicated by the Secretary General in his report (A/59/226, para. 11).

25. As to Costa Rica's proposal, Sierra Leone recognized the need to clarify the respective areas of application of international humanitarian law and of the Convention, so as to avoid any imbalances in protection and to fill any gaps. It was important to discuss the question side by side with other issues and to analyse the relationship between the Convention and Costa Rica's proposal. The proposal could well be included in the optional protocol without the need for a separate instrument, bearing in mind that the substance of the proposal might be the factor that had prevented many countries from ratifying the Convention. In that case, the momentum should not be lost.

26. **The Chairman** said that the Committee had thus concluded its discussion of agenda item 149.

Agenda item 160: Observer status for the Organisation of Eastern Caribbean States in the General Assembly (A/59/233; A/C.6/59/L.7)

27. **Mr. Severin** (Saint Lucia) introduced draft resolution A/C.6/59/L.7 entitled "Observer status for the Organisation of Eastern Caribbean States in the General Assembly", sponsored by Antigua and Barbuda, the Bahamas, Belize, Costa Rica, Dominica, Grenada, Guyana, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines and Suriname. He drew attention to annex I of document A/59/233, which explained in detail the nature, background, purposes and activities of the organization. The sponsors hoped that the draft resolution would be adopted without a vote.

28. **Mr. Sealy** (Trinidad and Tobago) said that the Organisation of Eastern Caribbean States provided a framework for coordination and cooperation in the pursuit of development goals in such areas as foreign policy, harmonization of legislation and economic and social development. Steps were under way to achieve economic integration at the subregional level and ensure that its member States were prepared to join the Caribbean Community (CARICOM) Single Market and Economy. The member States had established the Eastern Caribbean Supreme Court, the Eastern Caribbean Central Bank, the Eastern Caribbean Telecommunications Authority and the Directorate of Civil Aviation. They were following a common approach in such areas as education, export development, social development and pharmaceutical procurement services. Trinidad and Tobago therefore supported the request of the Organisation of Eastern Caribbean States for observer status in the General Assembly.

Agenda item 142: Convention on jurisdictional immunities of States and their property (A/59/22)

29. **Mr. Hafner**, (Chairman of the Ad Hoc Committee on Jurisdictional Immunities of States and Their Property), introducing the report of the Ad Hoc Committee on Jurisdictional Immunities of States and Their Property (A/59/22), recalled that the Ad Hoc Committee had been established by General Assembly resolution 55/150 of 12 December 2000. Pursuant to paragraph 2 of Assembly resolution 58/74, of 9 December 2003, the Ad Hoc Committee had been reconvened at Headquarters from 1 to 5 March 2004 and given the mandate to formulate a preamble and final clauses, with a view to completing a convention on jurisdictional immunities of States and their property, which would contain the results already adopted at its previous sessions.

30. The Ad Hoc Committee, having made great progress at its third session, had concluded its work on the text of the draft United Nations Convention on Jurisdictional Immunities of States and Their Property. It had based its work on the draft articles on jurisdictional immunities of States adopted by the International Law Commission at its forty-third session (A/46/10, para. 28), and on the discussions of an open-ended working group of the Sixth Committee. The text of the draft Convention, contained in annex I of the report of the Ad Hoc Committee, was therefore the culmination of 27 years of sometimes difficult work by the Commission, the Sixth Committee and the Ad Hoc Committee. The drafting of the text had been possible only because several States belonging to different legal systems and regions had made considerable concessions and shown great flexibility. Such flexibility was not easy to offer when domestic legislation was already in force, and for that reason, the flexibility and the concessions had to be mentioned particularly.

31. The report was composed of three chapters and two annexes. The first two chapters contained, respectively, the usual introductory information and a summary of the proceedings; chapter III contained the Ad Hoc Committee's recommendations. Annex I

contained the text of the draft Convention. Annex II contained the texts of two written proposals submitted in the course of the 2004 session.

32. He drew attention to the Ad Hoc Committee's recommendations in paragraphs 13 and 14 of the report. The first was that the General Assembly should adopt the draft Convention; the second was that the General Assembly should include in its resolution adopting the draft Convention, the general understanding that it did not cover criminal proceedings.

33. With the adoption of the text of the United Nations Convention on Jurisdictional Immunities of States and Their Property, the work of many years would come to a successful conclusion. As always, of course, some minor drafting corrections were still to be made in order to harmonize the text and avoid subsequent difficulties of interpretation. Such corrections, which would be done by the Secretariat, would not in any case change the substance of the draft text and should be no problem.

34. He listed the corrections that were needed in the English text. In article 2, paragraph 1 (b) (ii), the word "the" should be deleted before the words "sovereign authority". In article 11, paragraph 2 (b) (iii) should read: "A member of the diplomatic staff of permanent missions to an international organization, of a special mission, or is recruited to represent a State at an international conference". In paragraph 2, subparagraphs (c) and (d), of article 11, the word "subject-matter" should replace the word "subject", and in subparagraph (f) a hyphen should be inserted between the words "subject" and "matter". In article 27, paragraphs 3 and 4, the words "of this article" should be deleted. In article 33, the usual final clause beginning with the phrase "In witness thereof ..."needed to be added. In article 28, the date until which signature of the Convention would be possible still had to be inserted.

35. Generally, it must be borne in mind that the Convention would have to be read in conjunction with the commentary prepared by the International Law Commission, at least insofar as the text submitted by the Commission had remained unchanged. The Commission's commentary, the reports of the Ad Hoc Committee and the General Assembly resolution adopting the Convention would form an important part of the travaux préparatoires of the Convention. That common reading of the text of the Convention and the commentary would certainly clarify the text if certain questions of interpretation remained.

36. One of the issues that had been raised was whether military activities were covered by the Convention. The general understanding had always prevailed that they were not. In any case, reference should be made to the Commission's commentary on article 12, stating that "neither did the article affect the question of diplomatic immunities, as provided in article 3, nor did it apply to situations involving armed conflicts" (A/46/10, p. 114). It had to be borne in mind that the preamble stated that the rules of customary international law continued to govern matters not regulated by the provisions of the Convention.

37. That was an example of the general approach of the Convention: it did not apply where there was a special immunity regime, including immunities *ratione personae* (*lex specialis*). Sometimes that was expressly stated in the text, sometimes not. Thus, for example, the express mention of heads of State in article 3 should not be read as suggesting that the immunity *ratione personae* of other state officials was affected by the Convention.

38. He expressed his gratitude to all delegations for their valuable contributions to the work of the Ad Hoc Committee. Given the strong interest elicited by that increasingly important and ever-developing area of the law, it should be seen as a significant accomplishment to have reached agreement on an instrument which, if adopted, promised to harmonize the practice of States and facilitate commercial relations between States and private actors. In that regard, the flexibility and creativity demonstrated by delegations during the negotiations was noteworthy. He also thanked the members of the Bureau of the Ad Hoc Committee, Mr. Medrek (Morocco), Mr. Ogonoswki (Poland), Mr. Gandhi (India) and the Rapporteur, Ms. Plazas (Colombia), for their hard work and wise counsel, without overlooking the tireless efforts made over a number of years by the coordinators of the informal consultations, Mr. Yamada (Japan) and Mr. Bliss (Australia).

39. **The Chairman** commended the Ad Hoc Committee for its success in fulfilling its mandate of formulating the preamble and the final clauses of the draft Convention and expressed appreciation for Mr. Hafner's contributions in that regard.

40. **Ms. Noland** (Netherlands), speaking on behalf of the European Union, the candidate countries Bulgaria, Croatia, Romania and Turkey, the stabilization and association process countries Bosnia and Herzegovina, Serbia and Montenegro and the former Yugoslav Republic of Macedonia and, in addition, Liechtenstein and Norway, said that for the first time there was a complete text of the draft United Nations Convention on Jurisdictional Immunities of States and Their Property. It was the outcome of a long process of extensive preparatory work and difficult negotiations that had begun in 1977, when the General Assembly had recommended that the International Law Commission should take up the study of the subject with a view to its progressive development and codification. In that connection, the commentary prepared by the International Law Commission, the report of the Ad Hoc Committee, the statement of the Chairman of that Committee and the resolution by which the General Assembly would adopt the draft Convention would together form an important part of the travaux préparatoires of the Convention. In the view of the European Union, the time had come for the General Assembly to adopt the draft Convention and open it for signature.

41. **Mr. Mishra** (India) said that the draft United Nations Convention on Jurisdictional Immunities of States and Their Property had evolved over the years by taking into account the views of all Member States expressed in the Sixth Committee at various stages of its preparation. The text represented a fair and delicate balance between the different concerns of States and, although it did not give complete satisfaction to everyone, it was acceptable to every State because it was the fruit of consensus.

42. As to the form of the draft articles, India felt that the best solution was their adoption in the form of a convention, so that the rules could be stipulated with clarity, uniformity and certainty, and in a binding manner that would further clarify the scope and nature of the immunities of States and their property in relation to commercial activities. Such an instrument, which would be a significant contribution to the development of international law, would also keep in view the interests of the developing countries. For that reason, India supported the adoption of the draft United Nations Convention on Jurisdictional Immunities of States and Their Property.

43. **Mr. Romeiro** (Brazil), speaking on behalf of the States members of the Rio Group (Argentina, Bolivia, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela, as well as Brazil), expressed satisfaction at the progress accomplished by the Ad Hoc Committee on jurisdictional immunities of States and their property during the session it had held from 1 to 5 March 2004, during which it had adopted the preamble and final clauses of the draft United Nations Convention on Jurisdictional Immunities of States and Their Property. The draft text had thus been adopted as a whole with the recommendation, endorsed by the Rio Group, that the General Assembly should adopt it, and with the inclusion of a general interpretation according to which the Convention would not extend to criminal proceedings. The Rio Group countries welcomed the fact that the first preambular paragraph of the draft Convention stated that the jurisdictional immunities of States and their property were generally accepted as a principle of customary international law. Reiterating their full readiness to see the draft Convention become a legal instrument, the member States of the Rio Group expressed their conviction that such an instrument would enhance the rule of law and legal certainty and would contribute to the codification and development of international law and the harmonization of practice in that area.

44. **Mr. Stømmen** (Norway), endorsing the statement made by the Netherlands on behalf of the European Union, said that his delegation fully supported the recommendations of the Ad Hoc Committee and believed that the opportunity should be taken to adopt the draft United Nations Convention on Jurisdictional Immunities of States and Their Property, on the basis of the work done by the International Law Commission and further developed by the Ad Hoc Committee. The Commission's commentary, the Ad Hoc Committee's reports and its Chairman's statement, and the General Assembly resolution adopting the Convention would form part of the travaux préparatoires of the Convention.

45. Unlike a number of other States, Norway did not have a tradition of legislating the scope of State immunities. Instead of relying on a sovereign immunities act or some other national law on State immunity, its courts had to interpret international law to determine the limitations on the application of

national laws with regard to a foreign State. Needless to say, the adoption of the draft Convention would constitute a major achievement providing States and their courts with greater legal certainty. Consequently, Norway favoured the adoption of a convention based on the draft articles and on the general understandings provided in the commentary.

46. **Mr. Yamada** (Japan) said that his delegation associated itself with all the points made by the Chairman of the Ad Hoc Committee, including all the drafting changes to be made and the confirmation of the general understandings that had prevailed during the negotiations. Many of the draft articles incorporated from the 1991 text of the International Law Commission had remained unchanged, and therefore the Commission's commentary on those articles offered the basis for precise interpretation. Japan was convinced that the Convention would provide unified norms and stability in the field of jurisdictional immunities. It was therefore ready to adopt the draft Convention and would seriously consider early ratification of the Convention.

47. **Ms. Ahn** Eun-ju (Republic of Korea) said that the draft Convention was a significant achievement that would provide legal certainty and clarity, in particular for natural and juridical persons engaging in commercial dealings with States. Her delegation hoped that the General Assembly would adopt the draft Convention, as completed by the Ad Hoc Committee in March 2004, during the current session. It was also in favour of including in the resolution adopting the draft Convention the general understanding that the Convention did not cover criminal proceedings. The draft Convention was the result of a spirit of compromise among the various delegations, as manifested in the annex to the Convention, which set out understandings with respect to articles 10, 11, 13, 14, 17 and 19. She welcomed the conclusion of the draft Convention and urged all States to begin the necessary procedures for becoming party to it.

48. **Mr. Guan** Jian (China) said that long-standing differences on the issue of State immunities and conflicting national practices had adversely affected international exchanges. The formulation of an international legal instrument on State immunities was therefore highly significant for regulating State conduct and harmonizing and defining legal provisions on jurisdictional immunities, thereby helping to develop harmonious and stable international relations. His delegation had actively participated in the process of preparing the draft Convention in the expectation that it would take account the concerns of all parties as far as possible. The result, however, was not as satisfactory or perfect as had been expected. In defining a "commercial transaction", the provisions of the draft Convention did not give as much weight to the purpose of the contract or transaction as those adopted by the International Law Commission (ILC). Moreover, using the practice of the State of the forum to determine the relevance of that purpose would cause inequity, as the immunities granted by the court of the State adopting the "purpose" criterion to the State adopting only the "nature" criterion would be greater than the other way around. Of course, the important and complex issue of jurisdictional immunities of States and their property had a bearing on vital national interests and domestic legal systems. The final text of the draft United Nations Convention on Jurisdictional Immunities of States and Their Property was the product of a compromise achieved through the best efforts of all the parties. His delegation hoped that it would be adopted during the General Assembly's current session.

49. Regarding the legal status of the understandings with respect to certain provisions of the Convention, it was true that, according to the draft Convention (article 25), the understandings formed an integral part of the Convention. However, as clearly stated in the chapeau of the understandings, the purpose of the annex was to set out understandings relating only to the provisions concerned. The understandings did not, therefore, share equal legal status with the provisions of the draft Convention.

50. Regarding immunities in criminal proceedings, there had been a general understanding at the Ad Hoc Committee that a more appropriate placement for that issue was in a General Assembly resolution. His delegation had no objection to that view. While the draft Convention did not cover the issue, it was without prejudice to the immunities that States enjoyed in criminal proceedings under customary international law. His delegation would continue to cooperate in a pragmatic and flexible manner with other countries in finding solutions to the problems relating to State immunities, with a view to facilitating stability, and the development of international relations.

51. **Mr. Mwandembwa** (United Republic of Tanzania) said that throughout the deliberations on the

draft Convention, the draft articles meant to codify customary law had provoked controversies regarding the absolute or restricted character of State immunity and the extent to which the activities of a State and its commercial enterprises should be covered by State immunity.

52. Notwithstanding such controversies and differing views, his delegation noted with satisfaction that an agreement had been reached on a draft Convention which would allow the courts of another State to recognize the jurisdictional immunities of a State and its property. The draft Convention defined the limits of the immunity of States engaging in commercial transactions (article 10). The limits also covered contracts of employment, personal injury and damage to property, intellectual and industrial property, participation in companies, and ships owned or operated by a State (arts. 11 to 16).

53. The draft Convention should play a fundamental role in the age of globalization. It should enhance the role of law and legal certainty, particularly in the dealings of States with natural or juridical persons, and contribute to the codification and progressive development of international law and the harmonization of State practice in that area, taking into account the way in which such practice was evolving. Accordingly, the United Republic of Tanzania trusted that the General Assembly would approve the draft Convention during its current session.

54. **La Sra. Núñez de Odremán** (Venezuela), endorsing the statement of the Rio Group, said that only those rules of international customary law that were expressly recognized by the country and its domestic law were applicable to Venezuela. Venezuela also considered that the jurisdictional immunity of States and their property was based on State sovereignty and the legal equality of States.

55. **Ms. Ramos Rodríguez** (Cuba) said that her Government attached particular importance to the approval of the draft Convention, in which a variety of views on the matter had been reconciled. States and their property must enjoy jurisdictional immunity on the basis of the principle *par in parem non habet imperium* (an equal has no domain over an equal), as well as full respect for the principle of the sovereign equality of States embodied in Article 2, paragraph 1, of the Charter of the United Nations.

56. She firmly supported the recommendations of the Ad Hoc Committee, especially with regard to the adoption of the draft Convention by the General Assembly, and held that the adoption of a legally binding instrument would be an important contribution to the efforts to harmonize international practice in that area, which had so far been noted for confusion and the absence of universal standards. Only a convention codifying the subject could lead to a uniform international practice that would be more respectful of justice and the principles of international law, while also affording greater confidence and security to States in their international relations.

57. The draft Convention would need to enjoy wide international acceptance as well as support. Only its universal application would lead to attainment of the goals pursued during the years of intense efforts deployed for the adoption of such an important instrument.

58. **Mr. Rosand** (United States of America) said that the agreement reached on the text of the draft Convention at the final session of the Ad Hoc Committee had represented a very substantial achievement in an increasingly important and rapidly developing area of international law and practice. The text of the draft Convention reflected an emerging global consensus that States and State enterprises could no longer claim absolute, unfettered immunity from the proper jurisdiction of foreign courts and agencies, especially for their commercial activities.

59. The draft Convention embodied the so-called restrictive theory of State immunity, which was generally based on the classic distinction in international law between acts *jure imperii* and acts *jure gestionis*. Under that distinction, States which engaged in commercial transactions with foreign nationals could not invoke their sovereign immunity with respect to disputes based upon their commercial activity. Nor might immunity be invoked against claims for compensation for personal injury or damage to property caused by acts or omissions of a private law nature occurring within the foreign State where the damage was suffered, or claims with respect to rights or interests in real property within that foreign State.

60. Those exceptions to the general rule of foreign State immunity were widely recognized and had worked well. Courts could use them to balance the legitimate interests of States acting in their sovereign

capacity against the need to provide appropriate means of recourse for those who dealt with or were affected by States acting in a private capacity. A testament to the success of such exceptions was seen in the fact that they were increasingly followed in domestic and international practice. They should be endorsed by the United Nations.

61. The draft Convention, when adopted and brought into force, would provide a solid foundation on which all Member States could base their domestic law. It would result in a greater measure of harmonization and compatibility between domestic law and practice. However, no international legal instrument either was perfect or dealt with all the questions that it was meant to resolve. During negotiations, his Government had expressed a number of concerns in specific areas. In some instances, such concerns resulted from an insufficiently clear and precise wording of the text. While in others, the articles still contained gaps, omissions, ambiguities and inconsistencies.

62. First, in the area of remedies, the articles were not intended to disturb the general rule that a court in one State had no enforcement jurisdiction to issue coercive equitable relief, such as injunctions, to dictate the conduct of a foreign sovereign. At the same time, the draft articles should not be understood as limiting the use of such remedies by a court to protect the integrity of its own proceedings, or when the foreign State had dropped its mantle of sovereignty by appearing as a claimant.

63. Second, with regard to immunity from liability for personal injury and property damage, the formulation adopted in the Convention left open questions with respect to the further evolution of public international law in those specific circumstances where the impugned conduct contravened other widely accepted international conventions obliging States to grant remedies to the victims of prohibited conduct. The United Nations Conventions against torture and against hostage-taking were cases in point. Similarly, article 12, on jurisdiction over non-commercial torts, must be interpreted and applied consistently with the time-honoured distinction between acts *jure imperii* and acts *jure gestionis*. It was entirely appropriate for States to be held accountable — not to be able to invoke immunity — with regard to their tortious acts or omissions in circumstances where private persons would be. Domestic law in the United States and in many other countries provided for that eventuality. However, extending that jurisdiction without regard to the accepted private/public distinction under international law would be contrary to the existing principles of international law and would generate more disagreements and conflicts in domestic courts which could be better resolved, as they currently were, through State-to-State mechanisms. In other words, article 12 must be read in the light of established State practice to concern tortious acts or omissions of a private nature which were attributable to the State, while preserving immunity for those acts of a strictly sovereign or governmental nature.

64. Third, the precise scope of article 10, paragraph 1, as it related to proceedings "arising out of" commercial activities, posed similar difficulties. The essence of the draft Convention, which the United States strongly supported, was the principle that when States acted in the marketplace in a commercial capacity, they should be subject to the same jurisdiction as private parties. Accordingly, the "arising out of" jurisdiction provided in the article extended to conduct which was itself commercial in nature or related to such conduct, and not to acts of a public or sovereign nature. That was what the law provided in most States whose laws incorporated the so-called restrictive theory of immunity and what the United States believed the negotiators of the draft Convention had intended. As much could be said of the possible reach of host State jurisdiction into the internal operations of foreign embassies and consulates in article 11.

65. Lastly, there were significant omissions in the draft Convention, such as the time limit for States to respond to lawsuits in foreign courts. Although several articles addressed aspects of service of process on foreign States, the text did not incorporate the generally accepted rule of customary international law that a defendant State was entitled to no less than 60 days' notice of a suit before it must file its first response in a foreign court. The minimum 60-day rule had long been recognized internationally in court decisions dealing with the question as well as in national codifications of foreign State immunity. It was grounded in international public policy and intended to provide all States with the necessary time to evaluate their obligations and their options before responding to a complaint in foreign courts. That was the rule followed in the United States and he knew of no basis in international law or practice to the contrary.

Although the draft Convention did not explicitly endorse the 60-day rule which the United States would have preferred, he did not believe that it adopted or endorsed a contrary or more restrictive practice.

66. His delegation believed that the work in that area was not entirely complete and that, with the benefit of time and experience, the need might well arise to revisit some of the issues in the appropriate forum.

67. **Mr. Lavalle** (Guatemala) expressed his delegation's satisfaction at the fact that, after so many years, the work of drafting a multilateral treaty of universal scope on the jurisdictional immunities of States and their property had been brought to a successful conclusion, and that those States which already had domestic laws in the matter had not opposed the consensus that had emerged as the draft Convention was being approved in the Ad Hoc Committee. It was to be hoped that those States would become parties to the Convention.

68. Regarding the recommendation made by the Ad Hoc Committee in paragraph 14 of its report, he said that if the General Assembly accepted that recommendation, it would be difficult to implement. First, because the norms that defined the scope of a multilateral treaty normally appeared in the very text of the treaty, it would not occur to anyone who interpreted the Convention, and who was unfamiliar with the General Assembly resolution adopting it, to consult that resolution in order to determine the scope of the Convention, particularly because articles 2 and 3 of the draft Convention and its annex contained provisions limiting its scope.

69. Second, in accordance with the recommendation contained in paragraph 14, the resolution whereby the General Assembly adopted the Convention would form part of its *travaux préparatoires*. For that reason, in accordance with the guidelines provided in the Vienna Convention on the Law of Treaties on the interpretation of treaties, that provision could only be used to interpret the draft Convention if the conditions provided in article 32 (a) and (b) of the Vienna Convention were fulfilled. Nowhere did the draft Convention contain any provision that would require the *travaux préparatoires* to be used in its interpretation, as recommended in paragraph 14, which would fulfil the requirements of the Vienna Convention. Consequently, if the General Assembly were to act in the manner indicated in paragraph 14, it would do so in vain.

70. In order to refute that argument, it would have to be shown that should the General Assembly act in the manner described, the provision in the resolution whereby the Convention was adopted could, for the purposes of interpretation, be covered under article 31 (a) or (b) of the Vienna Convention, especially if that resolution was adopted without a vote. Even under those circumstances, however, such a line of argument was not convincing, because when the text of a treaty adopted by the General Assembly was published in the *United Nations Treaty Series*, the text of the respective Assembly resolution was not published alongside it.

71. Accordingly, Guatemala proposed that the recommendation contained in paragraph 14 should not be implemented literally unless the substance of that recommendation was incorporated in article 3 of the draft Convention, where it could appear as paragraph 4 of that article. In any case, a provision containing the recommendation could be incorporated in the annex to the draft Convention.

72. **Mr. Elmessallati** (Libyan Arab Jamahiriya) said that since its establishment pursuant to General Assembly resolution 55/150, of 12 December 2000, the Ad Hoc Committee had made significant contributions internationally. For that reason, his Government had supported its work. He noted with satisfaction that a balanced and effective international convention which contributed to the progressive development of international law had been drafted. The principle of State immunity was of particular importance. The draft Convention contained in document A/59/22 was a genuine contribution to the reaffirmation of that principle.

73. A list of the immunities and privileges embodied in international law was given in article 3 of the draft Convention, with an indication that they would not be affected by the Convention. Those immunities and privileges were thus reaffirmed as currently codified in international law. In article 5, the principle of State immunity from the jurisdiction of the courts of another State was reaffirmed, as was the principle of jurisdictional sovereignty.

The meeting rose at 12.05 p.m.

United Nations A/C.6/59/SR.14

General Assembly
Fifty-ninth session

Official Records

Distr.: General
31 January 2005
English
Original: Spanish

Sixth Committee

Summary record of the 14th meeting
Held at Headquarters, New York, on Tuesday, 26 October 2004, at 10 a.m.

Chairman: Mr. Simon ..... (Hungary)

Contents

Agenda item 142: Convention on jurisdictional immunities of States and their property (*continued*)

Agenda item 141: Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives (*continued*)

Agenda item 143: Report of the United Nations Commission on International Trade Law on the work of its thirty-seventh session (*continued*)

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of publication* to the Chief of the Official Records Editing Section, room DC2-750, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

04-57185 (E)

The meeting was called to order at 10.10 a.m.

Agenda item 142: Convention on jurisdictional immunities of States and their property (*continued*) (A/59/22)

1. **Mr. Kupchyshyn** (Ukraine) said that the establishment of unified rules on jurisdictional immunities of States and their property would bring stability and transparency to the commercial transactions between States and individuals. The international community had recognized the importance of the question in the context of increased direct participation of sovereign States in international trade. A unified jurisdictional immunity regime would promote the uniformity of international trade transactions and would offer, both to States and to individuals, a broad legal system covering a great variety of matters, including matters arising from judicial proceedings.

2. Ukraine welcomed the recommendation of the Ad Hoc Committee on Jurisdictional Immunities of States and their Property that the General Assembly should adopt the draft United Nations convention on jurisdictional immunities of States and their property. The convention would thus be rendered binding and directly applicable by domestic courts. Clear rules on jurisdictional immunities would be established, the proliferation of different domestic regimes would be checked, and an authentic codification of the subject would become available.

3. **Mr. Lauber** (Switzerland), after reviewing the various stages of the work which had culminated after half a century in the approval of the draft convention, said that the draft articles marked a milestone in the codification and progressive development of international rules on the topic. Their approval would enhance the clarity, transparency and safety of the legal rules governing what was an important question for the maintenance of good relations between States.

4. The definition of "commercial transaction" (art. 2, para. 2) distinguished between acts iure imperii and acts iure gestionis. That was a compromise formula but it had several advantages, for it recognized the importance of the practice of the State of the forum and did not imply interference in the right of the parties to a contract to submit it to the national jurisdiction of their choice in accordance with the principles of private international law.

5. The solution contained in draft article 10, paragraph 3, with respect to State enterprises was satisfactory. That provision should be read in the light of the common understanding set out in the annex to the draft convention concerning "piercing the corporate veil".

6. The question of contracts of employment addressed in article 11 had been the subject of many debates. In that case as well the annex to the draft Convention contained a common understanding. Although it might seem cumbersome, the procedure envisaged for cases in which a State argued its "security interests" (art. 11(d)) provided a balanced solution which took into account the interests of the employee and of the employer State.

7. Although article 19 (c), on post-judgement measures of constraint, provided that there must be a connection between the entity against which the proceedings had been initiated and the property against which the measures of constraint were to be taken, the concept had not been defined with sufficient clarity. It would thus be interesting to observe the evolution of the jurisprudence when the rule was applied in practice.

8. **Mr. Dahal** (Nepal) said that the draft convention was the culmination of 25 of years of work by the International Law Commission and the Sixth Committee. Its adoption by the General Assembly would make a significant contribution to the codification and progressive development of international law and the harmonization of the practice of States with respect to jurisdictional immunities. The rules would strengthen the rule of law and legal safety, especially in the relations between States and natural and legal persons.

9. The draft articles were particularly important in the context of globalization and dispute settlement. A balance had been struck between the interests of developed and developing countries; the draft articles would promote the interests of the developing countries where their commercial activities were concerned.

10. His delegation endorsed the general understanding that the point that the draft convention did not cover criminal acts should be addressed in a

resolution of the General Assembly. The draft convention should be adopted by consensus at the Assembly's present session and opened for signature by States. The commentary produced by the Commission, the reports of the Ad Hoc Committee and the Chairman's statement would constitute an important part of the preparatory work in connection with the draft convention and would help to overcome any difficulties which might emerge in the interpretation of its rules.

11. **Ms. Zabolotskaya** (Russian Federation) said that the provisions of the draft convention regulated one of the most important and complicated aspects of international law which for decades had given rise to disputes and practical problems in the relations between States. It had become apparent during the work on the draft convention that, given the political will, States could find constructive solutions for the most difficult and sensitive issues.

12. The draft articles confirmed the absolute jurisdictional immunity of heads of State and of diplomatic missions and their personnel. Of equal importance was the understanding that measures of constraint could not be taken against the property of diplomatic missions or consular offices.

13. The draft convention should be adopted at the present session of the General Assembly and opened for signature by States. It was to be hoped that it would become a universal international agreement which would enhance the organization of international legislation on jurisdictional immunities of States and their property.

14. **Mr. Kanu** (Sierra Leone) said that his delegation welcomed the consensus reached on the draft convention. That consensus was the fruit of cooperation among States with different legal systems. The draft articles displayed the necessary precision and clarity for the systematic application of their provisions.

15. Although not perfect, the draft articles were the satisfactory outcome of the compromises made by States in order to overcome the legal difficulties presented by various questions of international law, corporate trade law and commercial practices. They should be adopted at the present session of the General Assembly. With regard to the future interpretation of the text, the Commission's commentary, the Ad Hoc Committee's reports and the General Assembly resolution would form an important part of the preparatory work in connection with the convention.

16. **Mr. Medrek** (Morocco) said that his delegation welcomed the approval of the draft articles. They provided an international instrument acceptable to all and were the fruit of more than two decades of work in the Commission. A uniform international regime had at last been established to ensure the stability of the relations between States and give them greater confidence and safety with respect to jurisdictional immunities.

17. The adoption of the draft articles in the form of a convention would guarantee respect for the rules thus established, help to check the proliferation of varying national legislation on the subject, and introduce the uniformity, legal safety and homogeneity essential to the development of international trade. It would be desirable for the General Assembly to adopt the draft convention at the present session.

18. **Mr. Dolatyr** (Islamic Republic of Iran) said that the hard work done by the Commission, the Ad Hoc Committee and the Sixth Committee on the drafting of a uniform legal regime on jurisdictional immunities of States and their property demonstrated that the international community could not and should not take domestic legislation as the basis for setting the limits to such immunities, for that approach caused uncertainty and disputes between States.

19. His delegation agreed with the Ad Hoc Committee's recommendations concerning the adoption of the draft convention. Allowing reservations to the convention would not facilitate the unification of the relevant national laws or the rule of law in international relations, which had been the principal objective during long years of negotiation. All States must therefore be encouraged to sign and ratify the convention without submitting reservations. The General Assembly should include that consideration in the draft resolution on the convention.

20. **Ms. Anh** (Vietnam) said that Vietnam attached great importance to the question of jurisdictional immunities of States and their property and that the draft convention was a fairly balanced document. It reflected as far as possible the positions of the various States and groups of States. Vietnam endorsed the recommendation contained in paragraph 13 of the Ad Hoc Committee's report (A/59/22) that the General Assembly should adopt the draft convention. Once in

force, the convention would strengthen the rule of law and legal safety and would contribute both to the work on the codification and progressive development of international law and to the harmonization of the practice of States with respect to jurisdictional immunities.

21. **Mr. Peh Suan Yong** (Malaysia) said that the draft convention reflected the opinions of the countries which, like Malaysia, had taken part in the Ad Hoc Committee's debates. His delegation reiterated its concern about the provision contained in article 2, paragraph 2, which set out the criteria for determining the commercial character of a contract or transaction and established that such a determination depended mainly on the nature of the contract or transaction and that its purpose was a secondary criterion to be considered only if the parties to the contract or transaction so agreed or if in the practice of the State which was a party to the contract or transaction its purpose was relevant to determining its non-commercial character. In fact, both criteria should be taken into consideration in determining the commercial character of a transaction; that had been the practice of Malaysian courts when ruling on disputes concerning immunities of States.

22. **The Chairman** said that the Committee had thus concluded its discussion of agenda item 142.

Agenda item 141: Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives (*continued*) (A/59/125 and Add.1; A/C.6/59/L.14)

23. **Ms. Sotaniemi** (Finland) introduced the draft resolution on consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives (A/C.6/59/L.14); it was sponsored by the 60 countries listed in the draft resolution, which had now been joined by Uganda.

24. The international community remained confronted by violations of the security and safety of diplomatic and consular missions and representatives, and there had been an increase in acts of violence, such as bomb attacks on embassies, since the adoption of the last resolution on the item. The purpose of the draft resolution was to demonstrate the determination of States to prevent such violations in the future. It was also intended to draw attention to violations in order to help to strengthen the protection of diplomatic and consular missions and representatives. To that end she appealed to Member States to comply with the reporting procedures contained in the draft resolution. The sponsors wished the draft resolution to be adopted without a vote.

Agenda item 143: Report of the United Nations Commission on International Trade Law on the work of its thirty-seventh session (*continued*) (A/59/17; A/C.6/59/L.11 and L.12)

25. **Mr. Buehler** (Austria) introduced the draft resolution on the report of the United Nations Commission on International Trade Law on the work of its thirty-seventh session (A/C.6/59/L.11); the draft resolution listed the large number of sponsors. After pointing out that the draft resolution was very similar to the one adopted in 2003 (General Assembly resolution 58/75 of 9 December), he proceeded to review its content.

26. **The Chairman** introduced the draft resolution prepared by the Bureau on the Legislative Guide on Insolvency Law of the United Nations Commission on International Trade Law (A/C.6/59/L.12). After outlining its content, he said that the Committee would take the necessary action on draft resolutions A/C.6/59/L.11 and L.12 in due course.

The meeting rose at 11 a.m.

United Nations A/C.6/59/SR.15

General Assembly
Fifty-ninth session

Official Records

Distr.: General
23 March 2005
English
Original: Spanish

Sixth Committee

Summary record of the 15th meeting
Held at Headquarters, New York, on Thursday, 28 October 2004 at 10 a.m.

Chairman: Mr. Simon (Vice-Chairman) ..... (Hungary)
later: Mr. Bennouna (Chairman) ..... (Morocco)

Contents

Agenda item 138: Nationality of natural persons in relation to the succession of States

Agenda item 139: Responsibility of States for internationally wrongful acts

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of publication* to the Chief of the Official Records Editing Section, room DC2-750, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

04-57677 (E)

In the absence of Mr. Bennouna (Morocco), Mr. Simon (Hungary), Vice-Chairman, took the Chair.

The meeting was called to order at 10.05 a.m.

Agenda item 138: Nationality of natural persons in relation to the succession of States (A/59/180 and Add.1 and 2)

1. **The Chairman** recalled that agenda item 138, "Nationality of natural persons in relation to the succession of States", had been considered by the Sixth Committee at the fifty-fifth session. During that session, the General Assembly had considered the draft articles on nationality of natural persons in relation to the succession of States adopted by the International Law Commission in 1999 (A/54/10 and Corr.1 and 2) and had decided to annex the text of those articles to its resolution 55/153 of 12 December 2000. That resolution had also invited States "to take into account, as appropriate, the provisions of the articles in dealing with issues of nationality of natural persons in relation to the succession of States" and recommended that "all efforts be made for the wide dissemination of the text of the articles". The General Assembly had decided to include the item in the agenda of its fifty-ninth session. In its resolution 54/112 of 9 December 1999, the Assembly had invited Member States to submit comments and observations on the question of a convention on the nationality of natural persons in relation to the succession of States, and had reiterated that invitation in resolution 55/153. The comments and observations received from Governments had been reproduced in a note by the Secretariat (A/59/180 and Add.1 and 2).

2. **Ms. Noland** (Netherlands), speaking on behalf of the European Union, the candidate countries (Bulgaria, Croatia, Romania and Turkey), the stabilization and association process countries (Albania, Bosnia and Herzegovina, Serbia and Montenegro and the former Yugoslav Republic of Macedonia) and the EFTA countries Iceland, Liechtenstein and Norway, said that the draft articles submitted by the Commission had made a significant contribution to the development of uniform solutions to the problems of changes of nationality resulting from the succession of States. They were a useful guide to practice in dealing with that issue. The European Union commended the Commission for setting up a universal instrument regulating that difficult matter and establishing clear and authoritative guidelines, which were urgently needed to resolve the problems of State succession that a number of countries had confronted over the past decade.

3. She also noted the importance of the European Convention on Nationality of 1997 which, in the view of the European Union, constituted a significant standard in questions regarding nationality. She also mentioned the Council of Europe draft Protocol on the avoidance of statelessness in relation to State succession, which built on the Commission's draft articles and contained many provisions identical to them.

4. The European Union expressed its appreciation for the comments and observations from Governments on the question of a convention on nationality of natural persons in relation to the succession of States (A/59/180 and Add.1 and 2). It would be interested in additional comments and observations, taking into account in particular one of the main objectives of the Commission's draft articles, namely, avoidance of statelessness in cases of State succession. The comments and observations should be helpful in order to discuss, at the sixty-third session of the General Assembly, whether the Commission's work on that topic could contribute to the elaboration of a convention or other appropriate instrument.

5. **Ms. Sipraseuth** (Lao People's Democratic Republic) said that her delegation appreciated the valuable work of the Commission on nationality of natural persons in relation to the succession of States. Governments should be invited to take into account, as appropriate, the provisions contained in the draft articles that dealt with issues of nationality of natural persons in relation to the succession of States. In order to address those issues properly, the possibility of adopting a convention on the subject must be considered. The adoption of a convention would contribute to resolving matters concerning nationality of natural persons in relation to the succession of States, thereby strengthening the promotion of human rights of all people in the world. Her Government would consider becoming a party to such a convention.

6. **Mr. Čízek** (Czech Republic) said that his delegation fully associated itself with the statement of the European Union on the topic of nationality of natural persons in relation to the succession of States. He recalled previous statements to the Sixth

Committee in which his delegation had expressed satisfaction with the key principles on which the draft articles on nationality of natural persons in relation to the succession of States were based and had offered comments and observations aimed at further improving the text and its commentary. The delegation of the Czech Republic had also welcomed the recommendation of the Commission, adopted at its fifty-first session in 1999, that the final set of 26 draft articles on nationality of natural persons in relation to the succession of States should be adopted by the General Assembly in the form of a declaration.

7. By its resolution 54/112, the General Assembly had decided to include the item under consideration in the agenda of its fifty-fifth session, with a view to the consideration of the draft articles adopted by the Commission and their adoption by the Assembly in the form of a declaration. At its fifty-fifth session, the General Assembly had not reached consensus on the Commission's recommendation. By its resolution 55/153 it had taken note of the draft articles and annexed them to that resolution.

8. It was neither practical nor appropriate for the current draft articles to take the form of a legally binding instrument. One of the key purposes of the draft articles was to provide States involved in the process of succession with a reliable set of legal principles and recommendations to be considered and followed in the preparation of their domestic laws on nationality. Taking into account paragraphs 3 and 4 of General Assembly resolution 55/153, his delegation felt that the said purpose had already been achieved by annexing the draft articles to General Assembly resolution 55/153.

9. **Mr. Arai** (Japan) said that the draft articles on nationality of natural persons in relation to the succession of States prepared by the Commission had provided guidance for States in managing situations relating to statelessness in cases of succession of States. They had also succeeded in striking a balance between the power of States to determine nationality and the interests of individuals acquiring nationality.

10. Article 1 of the draft articles regarded the right to nationality as a basic human right. It provided that, in the case of State succession, the individual concerned was entitled to retain one of the nationalities that he or she possessed before the succession. That rule represented an important development in international human rights law and, although it needed to be embodied in State practice, the draft articles would certainly contribute to the development of international law in that sphere.

11. With regard to the application *ratione temporis* of the draft articles, a question that required careful consideration, Japan took the view that they should not be applied retroactively. Retroactive application could cause unnecessary confusion and change the nationality of the individuals concerned. That outcome, in addition to negatively affecting the interests of those individuals, would jeopardize legal stability. The draft articles should therefore be applied only to future cases of State succession.

12. Japan was in favour of adopting the draft articles in the form of a declaration. Developments in international law had meant that the acquisition of nationality by natural persons was gaining greater significance. The right to nationality had become an integral part of human rights and awareness of the issue of nationality and the protection of individuals against statelessness was increasing. However, it should not be forgotten that the determination of nationality remained linked to State sovereignty and that the laws governing the acquisition and determination of nationality varied from one country to another. Given the wide range of practices and views, States would presumably prefer to use the Commission's draft articles as a set of guidelines or guidance for improving their laws and practices, rather than adopting them as a legally binding instrument. Consequently, the draft articles would be best used as a set of guidelines for future cases of State succession. In that connection, the work of the Commission and the practice arising from the draft articles would contribute significantly to the development of international law.

13. **Mr. Rosand** (United States of America) commended the significant efforts that had culminated in the preparation by the Commission of the draft articles on nationality of natural persons in relation to the succession of States and said that his delegation shared the general idea behind the draft articles, namely, that individuals affected by the succession of States must possess the nationality of at least one of the successor States and that the States concerned must have the power to take measures to limit cases of multiple nationality.

14. The draft articles, a number of which in their current form gave rise to reservations on the part of the United States, constituted a complex text which should be studied carefully and exhaustively by Governments. Only nine States had submitted written observations on the draft articles. It was unclear, therefore, how far the rules provided therein should be incorporated into a legal instrument. It also remained to be seen how much support that option would attract. The most suitable course of action was to defer the consideration of the draft articles until the sixty-second session of the General Assembly in order to give other States time to prepare observations and comments.

15. **Mr. Chushev** (Belarus) said that it was time to assess the importance of the draft articles on nationality of natural persons in relation to the succession of States as an instrument that could contribute to the strengthening and development of international mechanisms designed to guarantee the right of all individuals to a nationality, as set out in the Universal Declaration of Human Rights.

16. When the Soviet Union had ceased to exist, Belarus had resorted to rules based on international criteria in order to resolve problems concerning the nationality of natural persons in relation to the succession of States. Belarusian nationality had been created in 1991, when the first law on nationality had been adopted. Under that law, citizens of the former Soviet Union who had been resident in the territory of Belarus when the succession had taken place had automatically acquired Belarusian nationality.

17. That law had subsequently been amended to protect the interests of those individuals holding the federal nationality of the Soviet Union who had been born or had lived for a considerable period in Belarus but had left the country before the enactment of the law. In 2002, a new law on nationality had been passed, the provisions of which were fully in line with those of the draft articles.

18. The current law simplified the procedure for acquiring nationality and authorized those who had held the nationality of the former Soviet Union to register as Belarusian citizens provided that they had been born or had lived for a considerable period in Belarusian territory prior to 12 November 1999. Their spouses and descendants could also avail themselves of that opportunity. The system entitled individuals affected by the succession of States to choose Belarusian nationality and prevented cases of statelessness.

19. Belarus was making every effort to deepen its links with individuals of Belarusian origin and had made provision for them and for all those whose right to Belarusian nationality had been affected in some way by the principle of succession to acquire Belarusian nationality. Belarusian legislation on nationality envisaged the possibility of reducing the period of seven years of continuous residence required to acquire nationality or of waiving that requirement in respect of Belarusians, those who identified as Belarusians, and their descendants born outside the Republic of Belarus.

20. Taking into account the experience acquired in the application of national legislation in the context of the succession of States, Belarus considered that the Commission's draft articles should be adopted in the form of an international convention. For those States in favour of a more flexible international legal instrument, such as a declaration, the provisions of a convention could provide useful guidelines for the resolution of the problems posed by succession. States that did not accede to the convention could incorporate into their practice any provisions that they considered acceptable. That solution would allow for the creation of an effective legal regime that would contribute to guaranteeing the right to nationality.

21. A number of the draft articles needed further work. Article 2 should define the term "habitual residence", which was used frequently in the text. Habitual residence should mean permanent residence in the territory affected by the succession. The inclusion of that definition would serve to alleviate the problem posed for Belarus and other countries that made use of the concept of permanent residence by the absence from their national legislation of the concept of habitual residence. Belarus took the view that, in order to finalize the draft articles and secure their adoption in the form of a convention, the possibility of establishing an *ad hoc* committee or a working group of the Sixth Committee should be investigated.

22. **Mr. Galicki** (Poland) said that his delegation fully aligned itself with the statement made by the representative of the Netherlands on behalf of the European Union.

23. During the fifty-fourth session of the General Assembly, in his role as Chairman of the International

Law Commission, he had introduced the Commission's report, chapter IV of which carried the title "Nationality in relation to the succession of States". That report, which contained 26 draft articles on nationality of natural persons in relation to the succession of States, along with a preamble and commentaries, had been the result of six years of work by the Commission on the initial topic of State succession and its impact on the nationality of natural and legal persons. In the absence of positive comments from States, the Commission had concluded that they were not interested in developing the part of that topic dealing with the nationality of legal persons. The Commission had decided to recommend to the General Assembly that the draft articles on the nationality of natural persons in relation to the succession of States should be adopted in the form of a declaration.

24. In its resolution 54/112, the General Assembly had decided to consider the draft articles at its fifty-fifth session, with a view to adopting them as a declaration. It had invited Governments to submit comments and observations on the question of a convention on nationality of natural persons in relation to the succession of States, with a view to the General Assembly considering the elaboration of such a convention at a future session.

25. During the fifty-fifth session of the General Assembly in 2000 the Sixth Committee had considered the item, and the coordinator of informal consultations on the topic had reported that although there was significant support among delegates for the adoption of the declaration, a number of delegates had preferred to take a step of a lesser legal order at that stage. Some degree of support had also been expressed for the adoption of a convention in due course.

26. On the recommendation of the Sixth Committee, the General Assembly had adopted resolution 55/153, taking note of the draft articles on nationality of natural persons in relation to the succession of States that had been drawn up by the Commission and annexed to the resolution. In that same resolution, the Assembly had invited Governments to take into account, as appropriate, the provisions contained in the articles that dealt with issues of nationality of natural persons in relation to the succession of States.

27. Although nationality was essentially governed by national legislation, the competence of States in that area could be exercised only within the limits set by international law. As a result of the development of human rights law since the Second World War, the traditional approach, based on the preponderance of the interests of States over those of individuals, had given way to a balancing of the legitimate interests of both States and individuals; that had been taken into account in the preamble to the draft articles. The preamble had expressed the Commission's fundamental concern for the protection of the human rights of persons whose nationality might be affected following a State succession. The preamble had been based essentially on the preambles to the 1978 and 1983 Vienna Conventions on the Succession of States.

28. The scope of application of the draft articles was limited, *ratione personae*, to the nationality of natural persons and did not extend to the nationality of legal persons. *Ratione materiae*, the draft articles encompassed the loss and acquisition of nationality, as well as the right of option, as far as they related to situations of succession of States. *Ratione temporis*, the scope of application of the draft articles covered the period in which changes of nationality resulting from the succession of States might occur.

29. It appeared that the Committee had three options. The first was to leave the issue as it was and to take no new action on the Commission's draft articles. The draft articles, which in formal terms were only an annex to the resolution and had no legal force, were nevertheless recognized by the international community as an important step in the codification and progressive development of international law.

30. Another option was to recommend that the General Assembly should adopt the draft articles in the form of a declaration, as the Commission had proposed in 1999. That would give them a higher legal status, though they would remain "soft law", creating no formal legal obligation for States regarding nationality in relation to the succession of States. Adopting a declaration would remove the possibility of further discussion of the topic.

31. The third option — the most ambitious, although also the most difficult to achieve — was to transform the Commission's codification work into a binding international treaty. The principles and rules which the Commission had drawn up would then become binding on the States parties.

32. Practice showed, however, that that draft articles prepared by the Commission were not directly

transformed into treaty provisions; instead, they were usually reformulated by special bodies, such as international conferences, ad hoc committees and working groups. During that process the draft articles underwent substantial change. A comparison of the Rome Statute of the International Criminal Court with the Commission's original draft illustrated that evolution.

33. In promoting a higher legal status for the draft articles, care must be taken to retain their original substance as far as possible. It would not be easy to choose from the options described, especially the last two. In 1999, Mr. Bernd Niehaus, then the representative of Costa Rica in the Sixth Committee, had said that while a treaty would have the advantage of being more binding, a declaration could serve as an inspiration to the progressive development of customary international law.

34. For the purposes of drawing up a treaty it must be considered that Part 1 of the Commission's draft articles contained principles of a general character which applied to all categories of succession of States. Those general principles deserved to be enshrined in an international convention. Any instrument adopted by the United Nations should reflect three elements, namely: (1) the recognition of the human right to a nationality; (2) the need to avoid statelessness; and (3) respect for the will of the persons concerned in deciding on matters of nationality in connection with the succession of States.

35. Those three elements could be reconciled with the inherent right of each State to determine who its citizens would be. The growing concern of the international community with finding legal solutions to the sensitive and complex problems of nationality in connection with the succession of States and the desire to respect human rights combined to give additional impetus to the search for a balance between the rights and interests of individuals and of States. The Commission's draft articles could well serve as a basis for such a solution.

36. **Mr. Ouaraga** (Côte d'Ivoire) said that the right to a nationality was without any doubt one of the fundamental human rights of all natural persons. His country assigned a constitutional status to that principle and supported all initiatives aimed at avoiding any situation of statelessness in which people might find themselves.

37. Côte d'Ivoire endorsed General Assembly resolution 55/153 on nationality of natural persons in relation to the succession of States in that nationality derived essentially from the domestic law of each State within the limits set by international law. His delegation was largely satisfied with the wording of the resolution since it was a liberal and balanced text. It also constituted a sound legal point of reference for the codification of rules dealing with the important issue of nationality of natural persons in relation to the succession of States.

38. As a former colony which had become a successor State upon gaining independence in 1960, Côte d'Ivoire attached particular importance to the resolution of that issue for three reasons: (a) more than 26 percent of its population was of foreign origin; (b) the controversy and passion that the issue of nationality generated in Africa was a recurrent problem that at times undoubtedly divided States as well as the people living within them; and (c) the final adoption of a resolution of that type would be an effective way to reduce the global risk of statelessness.

39. Côte d'Ivoire appreciated the helpful and important link that the resolution established between article 5, on presumption of nationality, and article 8, paragraph 2, and article 9, which embodied and preserved the sovereignty of the successor State within the limits of international law. The successor State did not have the obligation to attribute its nationality to persons who had their habitual residence in another State unless they would otherwise become stateless. All said, the successor State would have the power to make the granting of its nationality dependent on the renunciation by such persons of their nationality of another State.

40. His delegation fully shared the concerns expressed by Germany with regard to the tightening of the habitual residence criterion. That criterion should be formulated on the basis of indicators which took into account stability and genuineness, as well as attachment. Such a criterion constituted manifest evidence of the person's attachment to the successor State, apart from any legal tie, and for that reason deserved to be less strict and unattainable.

41. Obviously, under the laws of most States, nationality necessarily implied citizenship. Like most African laws, the Nationality Code of Côte d'Ivoire distinguished between nationality by attribution

(citizenship of origin) and nationality by acquisition (nationality obtained through naturalization or adoption). That distinction, which was not purely formal, entailed substantial and varied legal consequences for both categories of citizens. While nationality by attribution conferred on the holder the full enjoyment and exercise of all civil and political rights, nationality by acquisition introduced a relative restriction on those rights, since the persons concerned were subject to a trial period regarding their right to vote and to be elected.

42. Bearing that distinction in mind, the issue became whether the nationality affected by State succession was that of attribution or acquisition. The option of nationality by attribution for all without any other distinction as to status would amount to granting ipso facto and retroactively to persons in that situation, the right to vote and to be elected. It would cause problems in some States because, given the size of the foreign-born population in those States, that option could tip the electoral scale in some cases. The text of the draft articles would gain in precision if it distinguished clearly between the status of persons who previously held another nationality and that of children born in the successor State. Otherwise, there was a risk of the resolution becoming so politically charged as to depart from its original and presumptively noble goal of effectively reducing the global incidence of statelessness.

43. **Mr. El Jadi** (Libyan Arab Jamahiriya) said that the adoption of a convention on nationality of natural persons in relation to the succession of States was of particular importance because, as stated in the preamble to the draft articles, there was a need to ensure greater legal security for States and individuals. Addressing that issue and finding an appropriate solution would render an invaluable service to the international community because the loss of nationality endangered the human rights and fundamental freedoms of people who had lost their citizenship through State succession.

44. His delegation considered it important for the matter to be discussed in the Commission, with close attention to the observations and comments of those States that had experienced a succession. The consideration of specific cases and the sharing of different views relating to those experiences would enrich the debate on the draft articles.

45. The draft articles made no mention of the situation preceding their entry into force, a matter of great importance to people who had lost their nationality through State succession. His delegation agreed that international law should not be applied retroactively, particularly with respect to treaties governed by the Vienna Convention on the Law of Treaties; however, that should not keep the convention from applying to persons who had lost their nationality before its entry into force. The provisions of the convention could serve as guidelines for other regional or international courts and for arbitral tribunals. He proposed that States should implement those provisions until such time as the convention came into force.

46. **Ms. Zabolotskaya** (Russian Federation) said that States undergoing succession should institute the necessary measures, especially legislative ones, to ensure that people living in the territory affected by succession, and their status, were not adversely affected by such transformation. It was unacceptable for the lack of adequate norms to deprive increasing numbers of persons of the right to acquire citizenship. All persons had a right to a nationality and no one could be arbitrarily deprived of that right. The draft articles strengthened that fundamental principle and in that regard, article 5 on presumption of nationality was particularly important.

47. The best legal approach to resolving controversies over the nationality of natural persons in relation to the succession of States would be to conclude an international convention under the auspices of the United Nations which would give scope to the practice of States. If statelessness occurring in cases of State succession was to be avoided, account would have to be taken of the experience of other international organizations.

48. **Mr. Rodiles** (Mexico), emphasizing the importance of the topic of nationality of natural persons in relation to the succession of States, recalled that the right to a nationality was one of the most important human rights and the major premise for ensuring the effective legal protection of persons.

49. There were several reasons why the draft articles should take the form of a declaration by the General Assembly. A declaration could be a practical guide to finding normative solutions to issues arising from the nationality of natural persons in cases of State succession. Unlike a convention, which would require

a certain number of ratifications for its entry into force, the declaration would be applicable immediately following its adoption by the General Assembly. A declaration would contribute to the evolution of customary international law on the subject, to the extent that States would develop normative criteria for resolving cases based on those already dealt with in the draft articles.

50. The provisions designed to prevent cases of statelessness in relation to the succession of States would be counted as the greatest legacy of the Commission's draft articles, and priority must be given to establishing clear rules in that regard.

51. **The Chairman** said that the Committee had concluded its consideration of agenda item 138.

Agenda item 139: Responsibility of States for internationally wrongful acts

52. **Ms. Noland** (Netherlands) said that the draft articles on responsibility of States were frequently used in practice as the most authoritative source of norms in relation to State responsibility. International tribunals such as the International Court of Justice and the European Court of Human Rights had cited the draft articles in their judgements and advisory opinions, demonstrating the widespread recognition and importance that the draft had acquired in the few years' time since its conclusion.

53. The possibility that the draft articles might be adopted in the form of a universal convention could not be ruled out. Nevertheless, her delegation had some doubts as to the appropriateness of elaborating a convention at that time. To do so might undermine the common ground on which the text of the draft articles was based; there was a possibility that the convention might not enter into force or might not achieve a universal or quasi-universal status; and the inclusion in the articles of a dispute settlement mechanism raised difficulties. Most of the articles reflected customary international law; their incorporation into a convention would contribute little to the progressive development of international law. The remaining articles could be considered as related to progressive development; in that connection, State practice would contribute significantly to the development of customary international law in that area, and more time was needed for that to happen.

54. State responsibility for internationally wrongful acts was a matter of great importance, and States should continue to acquire greater experience in that regard through the practical application of the draft articles. Her delegation therefore believed that the topic should not be considered again until the sixty-third session of the General Assembly.

55. **Mr. Romeiro** (Brazil) said that the draft articles had sought to achieve a balance in the central debate concerning the nature of obligations between States in view of the growing need for accountability to the international community as a whole, as enshrined in the Vienna Convention on the Law of Treaties.

56. The draft articles should be adopted in the form of an international convention and an international conference of plenipotentiaries should be convened to that end. Bearing in mind the concerns expressed about the need for States to have adequate time to evaluate and consider the finished text, his delegation was open to suggestions that the General Assembly should take a step-by-step approach to the issue. His delegation would have preferred for the draft articles submitted by the Commission to include provisions on the peaceful settlement of disputes.

57. **Mr. Yamada** (Japan) recalled that, during the fifty-sixth session, his delegation had expressed the hope that the draft articles would be applied in State practice and in the decisions of international judicial bodies while States studied the draft articles and the commentary. It was encouraging to note that since then the draft articles had served as a guide for States and international judicial bodies on a number of occasions.

58. The adoption of the draft articles would contribute greatly to the development of international law by serving as a legal basis for the analysis of relations between States. The time was not ripe, however, for the convening of a diplomatic conference to adopt the draft in the form of a convention. It would be prudent initially to see how State practice and the jurisprudence of international courts reflected the ideas contained in the draft articles. Disputing States were always entitled to refer to specific parts of the draft articles as applicable law in their particular case. If States were able to find a common ground for much-debated areas through observation of practice and judicial decisions, it would become much easier to reach consensus on how the current draft should be revised or maintained. Japan would therefore prefer to

wait four or five more years before the General Assembly took up the matter again.

59. **Mr. Jia** Guide (China), emphasizing the importance for international law of the draft articles on responsibility of States for internationally wrongful acts, commended the work of the Commission, and said that his delegation had no objection to the convening of a diplomatic conference to examine the draft articles with a view to concluding a convention. What was involved was a very complex question affecting the interests of States. The draft articles had yet to satisfactorily address the concerns of a number of countries on very controversial issues such as "serious breaches of obligations under peremptory norms of general international law" and "counter-measures".

60. Any substantive action on the draft articles must be based on thorough consideration, adequate preparations and consensus. As conditions were not yet right for the convening of a diplomatic conference, the topic of State responsibility for internationally wrongful acts should be included in the agenda of the General Assembly on an annual or biennial basis, and a working group of the Sixth Committee could be set up so that members could exchange views on relevant issues and on ways to solve them, with a view to reaching a decision on action to be taken when conditions were propitious.

61. **Mr. Rosand** (United States of America), while emphasizing the Commission's contribution to international law in the area of responsibility of States for internationally wrongful acts, said that no further measures were needed in that regard. The draft articles, in their current non-binding form, had proved useful as a guide for States and other international bodies. For that reason, and because it had doubts concerning the usefulness of adopting new measures on the topic, his delegation was opposed to the convening of a diplomatic conference to conclude a convention on State responsibility.

62. **Mr. Chushev** (Belarus) said that, to encourage wider implementation of codified norms on the topic, the possibility of adopting the draft articles in the form of a convention should be considered. Such a document would strengthen international law and the international system. Moreover, the contribution of the United Nations to establishing the rule of law in relations between States would become effective only when the results of its efforts in the codification and progressive development of international law were embodied in an internationally binding document. The convening of a diplomatic conference with a view to adopting a convention would help to increase State participation in developing and strengthening the draft articles.

63. Generally speaking, the draft articles were balanced and impartial. A number of provisions, however, warranted further attention. The rules granting any State other than the injured State the right to invoke the responsibility of another State which breached its obligations to the international community as a whole (obligations *erga omnes*) needed to be analysed in greater depth. Until then, there had been no universally accepted list of rights and responsibilities *erga omnes*, leaving the way open for abuses. If the rules in question were to be retained in the draft articles, consideration would need to be given to the possibility of including a clear definition of obligations to the international community as a whole. Otherwise, such rules should be deleted or replaced by provisions defining the concept of *erga omnes*, for example, provisions which did not permit any State to invoke the responsibility of another State for failing to comply with the peremptory norms of international law (*jus cogens*).

64. One of the most controversial aspects of the draft articles was the taking of countermeasures in respect of an internationally wrongful act of a State. Such action was a legitimate way of inducing a State to comply with its obligations. However, given the existing inequality between States, the right to take countermeasures could intensify abuses by more powerful States. To prevent that, it was necessary to identify loopholes in the regime limiting countermeasures as outlined in Part Three, Chapter II, of the draft articles. Chapter II contained progressive elements which prevented subjectivity in the application of countermeasures especially with regard to the proportionality of countermeasures in respect of damage caused by an internationally wrongful act. If consensus was reached on the elaboration of a convention based on the draft articles, it would be important for that convention to include provisions relating to the settlement of disputes, including disputes resulting from the taking of countermeasures.

65. **Mr. Lenk** (Israel), while emphasizing the huge achievement which the conclusion of the draft articles

on responsibility of States for internationally wrongful acts represented, said, with regard to the final form of the draft articles, that it would be premature to convert them into a treaty. Instead, they should be left in their current state, while efforts to test their usefulness in international theory and practice continued. While some of the articles had withstood that test well, others had been questioned by States and scholars owing to shortcomings in such areas as the treatment of countermeasures, the dual regime on legal consequences which still bore the scars of the long battle over crimes and delicts, and the invocation of responsibility by non-injured States, which in his delegation's view did not reflect customary law.

66. The draft articles had been prepared as a body of secondary rules that applied, with the exception of *lex specialis* regimes, across the entire spectrum of primary international obligations. Given that international relations and the international legal order were in a constant state of flux, it would be counterproductive to try to establish immutable rules regulating the entire corpus of international legal obligations. The clarity provided by the Commission's draft was welcome; the rigidity inherent in its codification in treaty form, less so. Paradoxically, the adoption of a convention, particularly if it received few ratifications or was partly controversial, could diminish the importance of the draft articles. It would therefore be far more beneficial to retain the current flexible form and use the draft articles as a record of international legal development and a guide for States and international judicial bodies, especially as it could be argued that the true value of the draft articles lay not in their rudimentary and somewhat abstract provisions, but in the commentary, which shed light on the history, scope and purpose of each of the rules. In fact, his delegation recommended exploring ways in which to disseminate the commentary, and not just the draft articles, more widely.

67. The adoption of the text as an international treaty would be premature and unwise. If the draft articles were thrust into the arena of multilateral negotiations, political clashes and compromises, and "creative" drafting, it was doubtful whether the result would enhance their status or further advance the rule of law in international relations.

68. **Mr. Wood** (United Kingdom) said that the draft articles represented the culmination of 45 years of work by the Commission, States and the five Special Rapporteurs and were one of the Commission's great successes. The draft articles, which had already become the point of reference whenever States or international courts were faced with issues of State responsibility, represented an authoritative statement of international law on the matter and were referred to both by international courts and tribunals and by writers. In the few years since the conclusion of the Commission's work and the adoption of General Assembly resolution 56/83 on 12 December 2001, the draft articles had gained wide recognition.

69. The approval of the draft text had not been an easy task. Even though the draft articles included elements of progressive development, they were largely an essay in codification based on fragile compromises. They were not wholly satisfactory to any State in particular, but had nonetheless been accepted by the international community as a whole. Such an important achievement should not be put at risk lightly.

70. Some countries believed that it was desirable to continue working towards embodying the draft articles in a convention. However, he urged them to reflect carefully on the risks involved and to consider whether the supposed advantages outweighed the disadvantages. The main risk was that of reopening old and fruitless debates and ending up with new disagreements that could weaken the current consensus. If the convention received few ratifications, it could have less legal force than the draft articles. Furthermore, it might stifle the development of the law in a field which had always been characterized by State practice and case law. A convention would not bring much added value, as the articles annexed to Assembly resolution 56/83 were already proving their worth and entering the fabric of the law through State practice, court decisions and the teachings of scholars. It was instructive to compare and contrast State immunity and State responsibility, which were very different topics. State immunity arose largely between private parties and States and was argued in domestic courts. Where domestic courts applied international law directly, they might well need the clarity that a convention brought. State responsibility, however, operated at a different level: directly between States, and in international courts and tribunals, both of which were well equipped to deal with general international law, as reflected in the draft articles and the case law and State practice built upon them.

71. It was unwise to consider moving towards a convention on State responsibility, as that could cause the text to unravel and result in a convention with few ratifications. The draft articles should, therefore, remain in their current form and not be discussed by the Committee again until the sixty-third session. That would allow adequate time to gain further experience in working with the draft articles and consolidate the Commission's great achievement.

72. **Ms. Sotaniemi** (Finland), speaking on behalf of the five Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), said that the adoption of the draft articles as an annex to General Assembly resolution 56/83 had come as a disappointment to some, who felt that it was too modest an ending after 50 years' work. The Nordic countries did not share that view and continued to believe that the chosen solution was the best possible one. Three years after the adoption of the resolution, the draft articles had become the most authoritative statement available on questions of State responsibility. International courts, such as the International Court of Justice and the European Court of Human Rights, had referred to the draft articles in their judgements. The content of the draft articles could not be overridden by conventions or customary practices or by General Assembly resolutions or general principles of law. On the contrary, the draft articles were, for the most part, the expression of customary law in the matter. Accordingly, they should not be weakened by the compromises and agreements that would be a necessary part of a diplomatic conference dedicated to the preparation of a convention. Opening negotiations would probably endanger the current fragile equilibrium. It was not advisable to begin negotiations on a convention on responsibility of States for internationally wrongful acts. However, the item should remain on the agenda of the General Assembly so that it could be considered again, preferably not before the sixty-third session.

73. **Mr. Serradas Tavares** (Portugal) said that the issue of the State responsibility for internationally wrongful acts deserved to be incorporated into a legal instrument that would make a decisive contribution to respect for international law and to peace and stability in international relations. The draft articles on State responsibility should constitute the third pillar of the international legal order, together with the Charter of the United Nations and the law of treaties, the latter having already been codified in the Vienna Convention of 1969. States must not be over-cautious in their approach to the issue, since the only concern was to establish the consequences of internationally wrongful acts, not to define what was meant by a wrongful act. State responsibility was related only to secondary rules, not to the primary rules defining the obligations of States. It would be senseless to hold up development and codification work in that area while continuing to advance in others, such as diplomatic protection and the responsibility of international organizations, when the general principles applicable to all those areas were identical.

74. In response to the numerous calls from the General Assembly to expedite the study of the topic and continue to give it priority attention, progress must be made towards the preparation of a convention. In its resolution 56/83, the General Assembly had welcomed the conclusion of the work of the International Law Commission on responsibility of States for internationally wrongful acts and its adoption of the draft articles and also stated that they had been annexed to that resolution without prejudice to their future adoption or other appropriate action. Immediate action was needed. Several options were available: preparing a convention on the topic; setting up an ad hoc committee to work on that option; or requesting States to submit their final observations on the issue within a fixed deadline.

75. **Mr. Economides** (Greece), referring to the main positive elements of the Commission's draft articles on State responsibility, mentioned first the codification of customary rules on the topic, a creative and extremely difficult task that had made it possible to bridge the existing gaps in international law with a valuable text. That text, which gave comprehensive, valid and genuine expression to current international norms on State responsibility, was used by, inter alia, the International Court of Justice. The second positive element was the use of the notion of the international community as a whole, which appeared in article 33, paragraph 1, in which a distinction was made between the obligations of the responsible State owed to another State, to several States or to the international community as a whole, and also, either implicitly or explicitly, in articles 42, 48, 40 and 41. Consequently, and in accordance with the aforementioned provisions, in the event of a breach of international obligations owed to the international community as a whole, States

specifically affected by the breach could invoke responsibility as injured States, while all the remaining States were entitled, if not obliged, in the case of the obligations of a universal nature provided for in article 41 of the draft, to take collective or individual action against the responsible States in order to enforce respect for the law for the benefit of the general interest, namely, the international community as a whole.

76. The third positive element was the *jus cogens* norms, i.e., the peremptory norms of general international law, enshrined for the first time in the Vienna Convention on the Law of Treaties of 1969, which had now become part of the international order. They created obligations of higher rank than any other international obligation that might conflict with them, regardless of whether that obligation arose from a convention, from customary or institutional law, or from any other source. The draft articles dedicated a number of significant provisions to those norms, such as articles 26, 40 and 41 and a large section of article 50, and also served to strengthen an institution based on the notions of democracy and justice which had been introduced with a view to providing legal protection for the essential interests of the international community, i.e., the interests of all States, particularly the weakest.

77. The fourth positive element in the Commission's draft articles was the regime of specific responsibility for serious breaches of obligations under peremptory norms of general international law (articles 40 and 41). That regime, which was the draft's most significant innovation, imposed on all States three concrete obligations in favour of the injured State and against the responsible State, namely: States must cooperate to bring to an end through lawful means any serious breach within the meaning of article 40; no State should recognize as lawful a situation created by a serious breach of that nature, and no State should render aid or assistance in maintaining that situation. Consequently, any State committing such a serious breach would now be faced not only with the injured State but with all the States of the international community.

78. The fifth positive element of the draft articles was the development, strengthening and modernization of the law governing the international responsibility of States. On one hand, the responsibility regime was no longer unique, since a specific regime was being added to the general one. On the other hand, the classic bilateral relationship which the law on responsibility established exclusively between the injured State and the responsible State ceased to exist, in respect not only of serious breaches of obligations derived from peremptory norms of general international law, but also of all collective obligations and, in particular, obligations contracted with the international community as a whole. Draft article 48 authorized States acting to protect a collective interest to exercise all the rights granted to injured States, apart from the possibility of taking countermeasures. There was thus a gradual shift from the individual to the collective in the law governing State responsibility, which was called upon to play an increasingly significant positive regulatory role in the resolution of multilateral and global problems and, in general, in the protection of international lawfulness. Another positive element was that the Commission's draft articles did not address the notion of damage as a requirement for the invocation of responsibility. It emerged from article 1 of the draft, which stated that "every internationally wrongful act of a State entails the international responsibility of that State", that the requirement of damage, where necessary, depended on the applicable primary norm referred to in the draft articles (articles 1 and 2). Accordingly, that requirement, where necessary under the primary norms, was not affected. In addition, that provision served to emphasize that many international obligations, for instance those with negative results, could be breached and give rise to responsibility even though no material or moral damage had been caused. Thus, by highlighting the exclusively legal context, the Commission was promoting respect for the rule of law, the protection of which it guaranteed.

79. With regard to the negative aspects of the draft, it did not dedicate any provisions to obligations of means and obligations of result, a distinction that was significant and clearly useful in relation to the law governing the international responsibility of States. However, there were two even more negative elements, the first being the predominance of the unilateral taking of countermeasures over the obligation to settle disputes. Countermeasures, an archaic and retrograde practice that enabled States to take justice into their own hands, favoured powerful nations and undermined the authority and prestige of international law. However, article 52, paragraph 2, of the draft went even further, authorizing the injured State to take "such urgent countermeasures as are necessary to preserve its

rights", even where the State regarded as responsible had denied responsibility and agreed to submit the dispute to an international arbitral or judicial body. He regretted the inclusion of that provision, which accorded absolute priority to unilateral action by the injured State — action that could, when all was said and done, be unfounded — instead of to the settlement of the dispute in accordance with international law.

80. The draft was also deficient in its lack of procedures for settling disputes that might arise from the interpretation or application of its provisions. Such procedures would have been most useful to the law of the international responsibility of States as a whole and indispensable to the part relating to countermeasures. It was worth noting that the draft adopted by the Commission on first reading had included a third part devoted to the settlement of disputes (articles 54 to 60, followed by two annexes). In the end it had not been retained, which left a significant gap.

81. If the positive and negative aspects of the draft articles were compared, the balance was clearly positive. The draft — essentially a work of codification and, to a lesser extent, of progressive development of the law — represented a clear step forward that would prove beneficial to States and the international community. The only possible option was the adoption of an international convention. The adoption of an international convention binding upon the parties would confirm and consolidate the customary provisions of the draft and make obligatory the new provisions deriving from the progressive development of the law. An international convention, even if it received few ratifications, was the best solution as its authority was infinitely greater from all points of view than that of a non-binding text. The General Assembly was the body responsible for transforming the Commission's draft into an international convention. It was essential to maintain the entire draft, which contained various important compromises with regard to complex and controversial questions that must above all be maintained. Ideally, therefore, the Assembly should establish a working group entrusted with three specific tasks: to draft a preamble, to elaborate the final clauses of the instrument and to establish a dispute settlement mechanism. The Commission had already brought that question to the Assembly's attention.

82. **Mr. Špaček** (Slovakia) said there was no doubt that the responsibility of States for internationally wrongful acts was one of the most important topics completed by the Commission in its 56-year history. The draft articles on State responsibility were indeed one of the Commission's landmark codification activities. The text of the draft articles bridged a gap that had existed for a long time in the field of the codification of international law.

83. Slovakia considered that the articles on State responsibility were a well-thought-out exposition mainly of customary international law with a few important elements of progressive development. Most of the articles relied heavily on extensive State practice and the jurisprudence of international courts and arbitral tribunals, as demonstrated by the very useful commentaries. In 2001 the Committee had wisely decided not to begin commenting on the articles or discussing their content or substance. It had allowed a period of three years to evaluate the impact of the articles on State practice and to assess whether States had made use of them in their relations with other members of the international community, whether international courts or tribunals referred to and applied them in discharging their adjudicative or advisory functions, or whether there were aspects with which they disagreed. The Commission's draft articles on State responsibility had been exceptionally well received by the international community. They were widely referred to in the practice of States and international courts, and in international jurisprudence, for example, in recent decisions of the International Court of Justice or other international courts, including the European Court of Human Rights.

84. With regard to the draft articles, the recommendation formulated by the Commission in 2001 had proposed a clear two-stage approach. In the first stage, without any specific time limit, the articles should be tested and given the opportunity to gain universal recognition. In the Commission's view, the second stage might consist in the convening of an international conference of plenipotentiaries to examine the articles with a view to concluding a convention on the topic.

85. Slovakia held that, in the light of the importance of the articles and the topic itself, it would be premature to enter into negotiations on a convention. The Commission's draft articles on State responsibility required substantial and extensive recognition in the field of international legal relations. The international community needed more time to determine the best

approach to finalizing the Commission's work and the final form of the actions to be taken. Accordingly, the General Assembly should return to the topic, perhaps in three or four years, in order to evaluate it and consider the future of the draft articles, bearing in mind the option of adopting them in the form of a convention in the future.

86. **Mr. Playle** (Australia), speaking also on behalf of Canada and New Zealand, said that those countries were well aware that the Commission's articles on State responsibility had been almost 50 years in the making. Over that period, the Commission had had to grapple with the codification and development of one of the most complex and challenging areas of international law. Thanks to such efforts, the Committee had before it a comprehensive and finalized set of draft articles and commentaries. Those articles, as the product of thorough legal analysis and close consultation, had already introduced greater clarity and precision into the law of State responsibility.

87. An important choice was at hand: whether to adopt the results of the Commission's work as a convention or in the form of a resolution or declaration. Australia, Canada and New Zealand had long preferred the second option. It would therefore come as no surprise that they continued to support the Commission's recommendation on the appropriate form that the articles should take. They would support the adoption of a resolution incorporating the articles in the form of an annex or a declaration. Arguments supporting the adoption of the articles in that manner were clear and compelling; first and foremost, that approach would ensure that the integrity of the articles was maintained.

88. Australia, Canada and New Zealand sought to avoid any measure that would lead to the reopening, renegotiation or unravelling of the draft articles, or any situation that would entail a weakening of the articles on account of an unsuccessful convention with a low rate of ratification. On the contrary, it was necessary to safeguard the benefits of the progress made by the Commission during its 50 years of important work on the subject.

89. The draft articles had become a persuasive authority as many of them grouped together existing customary international law. The International Court of Justice had referred to them on a number of occasions, most recently in its advisory opinion on the "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory". Other international tribunals had followed suit, demonstrating that the articles would have a long-term influence even if they did not take the form of a convention. In fact, adoption by means of a consensus resolution would ensure the universality of the articles and render them more prominent, persuasive and relevant in the future.

90. As to whether the articles should contain a dispute settlement mechanism, such a mechanism would not be needed if the articles were adopted by way of a resolution. Reliance should instead be placed on existing dispute settlement mechanisms, such as the application of the so-called optional clause of the Statute of the International Court of Justice, and on recourse to other relevant tribunals, such as the compulsory jurisdiction of the International Tribunal for the Law of the Sea.

91. Australia, Canada and New Zealand considered that the most practical, realistic and effective option would be to adopt the articles as a resolution and to rely on the international tribunals and State practice and doctrine to adopt and apply the rules contained therein. Adopting the articles as a treaty would be too risky. It was timely and appropriate for the General Assembly to adopt such a resolution during its current session.

92. **Mr. Tuerk** (Austria) said that the draft articles on the responsibility of States for internationally wrongful acts were one of the most outstanding contributions that the Commission had made to the codification and progressive development of international law, as they went to the root of the international legal order and formed the basis of the whole system of international law. In addition, they applied to all substantive fields of international law, in that whatever matters the substantive rules of international law addressed, the rules on State responsibility applied to breaches of those rules.

93. The Commission had taken more than 40 years to achieve the final result which it had presented to the General Assembly in 2001. International law had changed considerably over that period and the Commission had been forced to keep pace with developments. A comparison of the text achieved after the first reading with the final text clearly illustrated those various changes and the text mirrored the current State of the international legal order. In cases where the

Commission characterized one or another provision as constituting progressive development of international law, the provisions had been carefully drafted so that future developments would not be prejudged.

94. The draft articles on State responsibility, the great authority of which derived not only from the high qualifications of the Special Rapporteurs, but also from their substance, had already received broad attention in international practice and doctrine. The International Court of Justice had referred to the articles on various occasions and States frequently relied on them in their argumentation in international relations. The General Assembly had rightly commended them to the attention of States in its resolution 56/83. It would be difficult to imagine how the system of international law could function without the regime on State responsibility drafted by the Commission.

95. One of the main questions on which discussions in the Commission and the General Assembly had focused was the legal form which the draft articles should take. Arguments had been made in both directions, favouring either a non-binding instrument or a convention. The Commission had remained undecided although a preference for a non-binding instrument could be discerned in its report of 2001. It would be out of place to restate the arguments advanced therein. The Commission had reached the understanding that, in the first instance, it should recommend to the General Assembly that it take note of the draft articles in a resolution and annex the text of the articles thereto. It had also been proposed that, in the light of the importance of the topic, the Assembly should consider the adoption of a convention on the subject at a second and later stage.

96. After thorough consideration of the matter, the Austrian delegation favoured the adoption of the draft articles on the responsibility of States for internationally wrongful acts in the form of a convention. The articles were a basis of international law similar to the Vienna Convention on the Law of Treaties, for that reason, they should receive the same treatment. Without a binding commitment, some States might not feel obliged to comply with the articles and would feel free to apply different regimes and concepts of State responsibility, thus impairing the valuable work of the Commission. Only with a legally binding instrument could the attitude of States regarding their responsibility become stable and predictable.

97. The current reality, however, was that a number of States were reluctant to adopt a convention on the subject of State responsibility. The drafting of a convention would require substantial efforts by all States and additional work had still to be done for that purpose. The question of dispute settlement would also arouse controversy. For all those reasons, and since there was no immediate need to open the Commission's text for signature, Austria remained flexible and suggested that the question should be considered again no later than the sixty-second session of the General Assembly. The most important thing was to avoid changing the carefully elaborated balance among the articles. Accordingly, his delegation would resist any attempt to make substantive changes to the text, as that would jeopardize the results achieved to date.

98. **Mr. Romeu** (Spain) said that the preparation of draft articles on the responsibility of States for internationally wrongful acts constituted a milestone in the codification and progressive development of international law. Having an adequate body of laws in the matter was an indicator of the development of a legal system. The articles reflected to a large extent widely accepted customary norms and also constituted a benchmark in the judicial practice of such bodies as the International Court of Justice and arbitral tribunals.

99. That notwithstanding, recourse to the doctrinal value of such a text should only be a stopgap measure. Only an international legal instrument, preferably a codification convention, could provide adequate legal security. For that reason, the General Assembly would have to revert to the issue at its sixty-first or sixty-second session, with a view to laying the groundwork for the eventual convening of a diplomatic conference at which a convention that Spain supported could be negotiated and concluded.

100. **Ms. Rivera** (Uruguay) commended the work of the Commission on the topic of State responsibility for internationally wrongful acts, which represented significant contribution to the progressive development and codification of international law. The draft articles contained and codified norms of international customary law and also reflected State practice as well as doctrinal interpretation and jurisprudence. Generally, Uruguay agreed with the way in which the basic rules regulating the international responsibility of States for wrongful acts had been codified and the

manner in which innovations to promote their progressive development had been introduced.

101. The draft articles contained provisions that regulated extremely important issues which should be carefully considered and discussed. The time had come to explore the possibility of convening an international conference of plenipotentiaries to consider the text with a view to concluding a convention in the matter. The conference would be a good opportunity to evaluate the extent to which dispute settlement provisions might be incorporated into the draft articles. As a traditional defender of arbitration, Uruguay would consider with interest the proposals that would be submitted in that regard.

102. **Ms. Mas y Rubi Sposito** (Bolivarian Republic of Venezuela) commended the Commission's work in the development and codification of international law on responsibility of States for internationally wrongful acts. Such acts should include responsibility of States for the actions of transnational corporations linked to them either by their nationality or that of their majority stockholders or of the decision makers in their administration. Furthermore, the extraterritorial application by States of illegal provisions of their domestic law that caused harm to other States must be defined as illegal. The draft articles must be carefully examined and discussed.

103. Her delegation supported the holding of an international conference of plenipotentiaries to examine the draft articles of a future convention on that topic, but only when the draft had reached the stage where it could be discussed at that level. She agreed with the Committee's recommendation that such a conference would provide a good opportunity to evaluate whether it would be appropriate to include dispute settlement provisions in the draft. Her delegation supported voluntary arbitration as a legal formula for the settlement of disputes in international law.

104. **Mr. Lavalle** (Guatemala) said that the basic problem posed by the draft articles on responsibility of States for internationally wrongful acts was that of the final form of the articles. There were only two possibilities: to convert them into a multilateral treaty of universal scope, or to make them a part of universal customary law. He preferred the second option for four reasons. First, the articles had already begun to move in that direction and some of their provisions had been mentioned by international courts or arbitral tribunals, or had guided the decisions of those bodies. Second, if the articles ended up as part of treaty law, it would not always be easy for the Commission's commentaries to be given the importance they deserved as criteria for interpretation. Third, if the articles acquired the standing of customary law they would immediately become binding on all States, whereas if they became a treaty, at least initially, they would be binding only on the States parties. Finally, their incorporation into international law as customary law would probably be simpler than the elaboration of a treaty. Few of the provisions of the 1996 articles would achieve that status alongside those of 2001, but their survival would be advantageous, especially that of articles 12 (mutatis mutandis) and 13, article 18, paragraph 5, and article 25, paragraph 5. Articles 16 and 17 should not be interpreted to mean that if the scenarios described therein were to occur, but if for the State which aided, assisted or participated in the "act" that was "internationally wrongful if committed by that State", the act was not wrongful, then the conduct should be considered lawful. Natural justice required that the conduct must, under any rule of general international law, be a wrongful act.

105. By definition, however, such conduct would be wrongful because it infringed a primary rule of international law, in which case the incident would not be covered by the articles mentioned. Nevertheless, if the scenarios described in articles 16 and 17 (with the exception of those referred to in paragraph (b) of both articles) occurred, then a primary rule of general international law would have been violated. It was difficult, therefore, to understand how there could be a violation not of a separate rule, but of one that was also part of general and primary international law, in cases in which all the hypotheses of one or another article were combined.

106. The question arose as to what that primary norm would be. If the norms established in articles 16 and 17 were secondary, it would not to be possible to find it. The only way out of that logical predicament was to attribute a primary character to the rules contained in the articles in question, which would imply that such rules were out of place in the draft articles.

107. It seemed odd that, in accordance with article 48, paragraph 2 (b), a State other than the injured State could, in the interest of the latter, claim from the responsible State the obligation of reparation. That

seemed to indicate that, in any case, a State other than the injured State automatically took on the character of agent of the injured State, without which the necessary measures could not be taken to enable the injured State to obtain the reparation owed to it. It might well happen, however, that the injured State either did not desire such reparation or had, in accordance with article 20, given its consent to the violation of international law that had caused the injury. Nevertheless, it was possible that the injured State might wish to act on its own behalf. For that reason he understood that, despite the provisions of paragraph (b), a non-injured State could not act on behalf of the injured State unless the latter authorized or gave its consent for that purpose. Similar although much more complex observations also could be made with regard to the power granted in paragraph (b) to a State other than the injured State to invoke the responsibility of the wrongdoing State on behalf of the beneficiaries of the obligation breached.

108. As for article 54, Guatemala believed that the Commission could have undertaken a measure of progressive development. The article could have provided that, if a State which applied *motu proprio* the penalties provided for in Article 41 of the Charter of the United Nations to another State which had not complied with the obligations imposed by the Security Council under Chapter VII of the Charter, the State taking the measures would be acting in accordance with the law even if the measures assumed non-compliance with an obligation imposed on it under international law vis-à-vis the State which was the object of the measures, as long as it was not one of the obligations specified in article 50, paragraph 1, of the draft articles.

The meeting rose at 1 p.m.

United Nations A/C.6/59/SR.16

General Assembly
Fifty-ninth session

Official Records

Distr.: General
9 March 2005
English
Original: Spanish

Sixth Committee

Summary record of the 16th meeting
Held at Headquarters, New York, on Friday, 29 October 2004, at 10 a.m.

Chairman: Mr. Bennouna ..... (Morocco)

Contents

Agenda item 139: Responsibility of States for internationally wrongful acts (*continued*)

Agenda item 140: Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts

Agenda item 141: Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives (*continued*)

Agenda item 160: Observer status for the Organisation of Eastern Caribbean States in the General Assembly (*continued*)

Agenda item 143: Report of the United Nations Commission on International Trade Law on the work of its thirty-seventh session (*continued*)

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of publication* to the Chief of the Official Records Editing Section, room DC2-750, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

04-57948 (E)

The meeting was called to order at 10.15 a.m.

Agenda item 139: Responsibility of States for internationally wrongful acts *(continued)* (A/56/10 and Corr.1 and 2)

1. **Mr. Boonpracong** (Thailand) said that the International Law Commission's draft articles on responsibility of States for internationally wrongful acts (A/56/10 and Corr.1 and 2, chap. IV) codified customary international law in that area and, at the same time, contained certain elements of progressive development. The draft articles were the culmination of 50 years of hard work based on careful analysis of State practice, jurisprudence and doctrine. States' comments and observations had also been taken into account. The draft was the soundest formulation of the principles of State responsibility available to the international community. Since its provisional approval, it had been used by a number of judicial and arbitral tribunals in support of their legal reasoning.

2. Nonetheless, the draft articles were far from perfect, and certain substantive issues remained in dispute. Article 54, on "Measures taken by States other than an injured State", raised the fundamental problem of whether international law, in its current form, recognized the concept of "obligations *erga omnes*", which the draft articles defined as obligations "to the international community as a whole", and if so, what were the legal consequences of their violation. That concept, which had appeared for the first time in the Judgment of the International Court of Justice in the *Barcelona Traction* case, had been used by the Court on many occasions. His delegation believed that the logical consequence of a violation of an obligation to the international community as a whole should be that States which had not been injured by that violation, but which had a legal interest in it, should be able to invoke the responsibility of the offending State. The possibility of taking countermeasures against the responsible State had led to disagreements and conflicting opinions in the Commission; consequently, the current article 54, which was the result of a compromise, provided safeguard clauses for all parties. His delegation noted with concern the doubts which could arise concerning the precise scope and meaning of the term "lawful measures" used in that article, as opposed to the concept of "countermeasures". The ambiguity of that provision could give rise to abuses. Consequently, it was to be hoped that subsequent developments in international law, especially those based on State practice and the jurisprudence of the Court, would clarify the application of the concept of obligations *erga omnes* in the field of State responsibility.

3. As for questions relating to the form that the articles should take and to dispute settlement, his delegation noted, first, that the two issues were related. The establishment of a detailed dispute settlement regime would be meaningful only if the draft articles were embodied in an international convention. In any case, whatever form the draft articles took, there should at least be a reference to the obligation to have recourse to the peaceful settlement of disputes in accordance with the provisions of Articles 2 and 33 of the Charter of the United Nations. Both options, the signing of a convention and the adoption of the articles in the form of a declaration, had advantages and drawbacks. Given the careful balance enshrined in the text of the draft articles, it would be inadvisable to subject it to a negotiating process at a diplomatic conference, which would probably go on for many years, might endanger the agreements that had been reached, and might lead to a convention which might not receive many ratifications.

4. **Ms. Thoma** (Cyprus) said that, thanks to the Commission's draft articles on responsibility of States for internationally wrongful acts, the topic of State responsibility had a much broader foundation and its basic norms and principles were frequently invoked by the International Court of Justice and the European Court of Human Rights in their judgements and advisory opinions. The International Court of Justice, for example, recognized that obligations *erga omnes* existed and that the interest of the international community as a whole and of international public order must be taken into account.

5. Generally speaking, her delegation shared the Special Rapporteur's approach to both the substantive issues and the drafting of the articles, and considered that one of its main concerns, namely, Part One, Chapter V (Circumstances precluding wrongfulness), had been dealt with appropriately. The issue of consent, which must in any case be freely given, should be treated with particular caution. The very essence of peremptory norms was that they could not be derogated from by agreement between the parties, since that would be contrary to international public policy and international public order. For example, any

purported derogation from the peremptory norm contained in Article 2, paragraph 4, of the Charter, which prohibited the use of force, would be invalid, even if that agreement had not been obtained through an imposed or unequal treaty. In that regard, her delegation was pleased to note that article 26 (Compliance with peremptory norms) provided that "Nothing in this chapter precludes the wrongfulness of any act of a State which is not in conformity with an obligation arising under a peremptory norm of general international law."

6. Her delegation considered that countermeasures must conform strictly to the requirements laid down in the Charter of the United Nations. Their scope must be limited and clearly defined, they must not give rise to abuses at the expense of weaker States, and they must be subject to binding dispute settlement procedures. In addition, it should be emphasized that armed countermeasures were prohibited and that the adoption of countermeasures could not justify non-compliance with rules of *jus cogens* involving human rights. As to the form that the draft articles should take, her delegation would prefer that they be adopted as a binding convention; States could have input into the drafting of that convention, and its result would be a legal instrument which would enjoy international support and a greater degree of certainty, durability and authority.

7. In accordance with the position consistently advocated by her delegation, i.e., that multilateral treaties concluded under the auspices of the United Nations should have an effective, comprehensive, expeditious and viable dispute settlement regime, entailing a binding decision on all disputes arising out of their substantive provisions, it was particularly important that an effective dispute settlement regime should be established, that was an essential requirement for a well-functioning legal regime of State responsibility.

8. The General Assembly should adopt the draft articles in the form of a convention, as soon as possible. In that regard, a working group of the Sixth Committee should be set up in order to draft the preamble and final clauses of the draft convention, including those relating to dispute settlement.

9. **Ms. Collet** (France) said that her country endorsed the General Assembly decision contained in its resolution 56/83, of 12 December 2001, to commend to the attention of Governments those articles relating to State responsibility for internationally wrongful acts submitted by the International Law Commission "without prejudice to the question of their future adoption or other appropriate action". Considering that Assembly resolution 56/83 was only a stage in the codification and progressive development of the law of State responsibility for internationally wrongful acts, France preferred the solution recommended by the commission that appeared in the preamble to the aforementioned resolution, to the effect that the Assembly "should consider at a later stage, in the light of the importance of the topic, the possibility of convening an international conference of plenipotentiaries to examine the draft articles with a view to concluding a convention on the topic". In keeping with that approach, she recalled that as provided for in the Commission's terms of reference, its mandate was not only to formulate guidelines which would serve as a point of reference for Member States, but also and especially to promote the progressive development and codification of international law through the drafting of international conventions. In the case under review, opting for the form of a convention was particularly appropriate, given the importance to Member States of the norms contained in the draft articles. The text finally submitted by the Commission was a significant improvement on previous drafts and a good point of departure for negotiating a treaty instrument.

10. Given that some provisions in the draft went beyond the scope of codification of international customary law and encroached upon the progressive development of international law, while others, such as those on countermeasures, seemed to exceed the conceptual scope normally attributed to the law of international responsibility, the most appropriate way of proceeding would be for States to voice their opinions on all those questions within the framework of a conference of plenipotentiaries. France clearly reaffirmed the possibility of drafting an international convention on the topic using the text submitted by the Commission as a starting point. All said, France would not oppose the idea of the General Assembly setting a new time frame so that it could conduct a deeper study of the evolution of international practice in the area of State responsibility.

11. France considered it reasonable for the topic of State responsibility for internationally wrongful acts to

be reinscribed in the agenda of the General Assembly no later than its sixty-first session.

12. **Mr. Hmoud** (Jordan) said that the articles on responsibility of States annexed to General Assembly resolution 56/83 were balanced; they generally reflected the rules of international law on the subject, avoided controversial concepts which would have hindered their acceptance by States, and had been continuously cited by States, judicial organs and jurists. In the *LaGrand* case, the International Court of Justice had referred to the articles even before they had been finalized and had recently, in its advisory opinion on the legal consequences of the construction of a wall in the occupied Palestinian territory, cited the articles on responsibility in its response to the question raised by the General Assembly. Both the articles codifying international law and those which were considered as developing certain rules of law had become authoritative and were in fact a restatement of the law. Among the issues provided for in the articles was the legal regime on countermeasures, whose codification constituted a safeguard against political and arbitrary countermeasures, and included a set of legality tests which any such countermeasure would have to satisfy. Another important achievement was the laying down of legal grounds for *actio popularis*. Regulation of such a concept and the measures which States were to adopt in response to, or as a consequence of, a serious breach of peremptory norms of international law was a key legality safeguard. In addition, article 41 made it clear that action by the international community against a serious breach of such norms was obligatory and not discretionary, a point which the Court had reiterated in its advisory opinion on the construction of a wall in the occupied Palestinian territory. The Court had thus confirmed that the substance of Chapter III of Part Two of the draft articles, which had been the subject of debate for some time, actually reflected the rule of international law on that issue. Jordan preferred for the articles to take the form of a convention, for which reason they should be supplemented by a section dealing with the settlement of disputes together with a preamble and final articles. Nevertheless, it would be flexible regarding the final form that the General Assembly might wish to give to them, because they had already become part of the general rules of international law.

13. **Ms. Mavroudi** (Germany) commended the Commission for its successful work on State responsibility for internationally wrongful acts and said that, given their significant impact on bilateral and multilateral relations between States, the draft articles should be seen as a landmark in the development of international law. The draft articles on State responsibility reflected international customary law to a large extent and had been used as a model law. They were also frequently used in practice, as national and international courts had referred to them in their judgements and advisory opinions when dealing with cases related to the consequences of internationally wrongful acts. Her delegation was of the opinion that, while the draft articles should receive wide recognition, there was no need to rush into the drafting of a convention. The question of whether the draft articles should be embodied in a binding international convention should be reconsidered after a couple of years, but that should not lead to a renegotiation of those articles which were substantive in character.

14. **Ms. Zabolotskaya** (Russian Federation) reaffirmed her delegation's view regarding the timeliness of drafting an international convention which used the draft articles on State responsibility for internationally wrongful acts as a point of reference. Generally speaking, the Russian Federation considered that the Commission had drafted a balanced document that embodied the basic principles of State responsibility. Together with its commentaries, the draft had been most helpful for resolving some international controversies and had been used by the International Court of Justice and other prestigious international bodies. Although some aspects of the draft raised concerns, those were issues that could be duly addressed during the drafting of the international legal instrument, for which a working group of the Sixth Committee or an ad hoc committee of the General Assembly should be established. Regulation by means of a convention of some of the most controversial aspects of an issue as sensitive as the international responsibility of a State would be a good testimony to the strengthening of the role of international law in international relations.

15. **Mr. Lauber** (Switzerland), commending the important work done by the commission, welcomed the progress made in the preparation of the draft articles on State responsibility for internationally wrongful acts. Nevertheless, Switzerland considered that it would be premature to draft an international convention on the topic. Given the importance of the issue, time was

needed to further elaborate the draft articles and achieve the widest possible consensus. Switzerland wished to see the discussion of the topic continue and supported the adoption of a convention at the sixty-second or even the sixty-third session of the General Assembly.

16. **Mr. Rodiles** (Mexico) reiterated his delegation's sincere congratulations to the Commission for the draft articles on the responsibility of States for internationally wrongful acts. The draft articles represented the most significant development in international law in recent decades. They involved a shift from a restrictive conception of international liability, one that was basically confined to the protection of persons and their property in foreign States, to a fundamental legal concept which made international rights and obligations into entitlements that could be claimed within a centralized system. They also involved a shift from an understanding of people's rights as a set of contractual bilateral regimes to an understanding of a genuine universal legal order which, without excluding the foregoing, was distinguished by its concern to protect the most fundamental values of the international community as a whole.

17. Mexico was of the view that the function of the draft, as an engine of development of international law on State responsibility for internationally wrongful acts, was not complete. While the progress made by the Commission had been used by States and recognized by international courts for several decades, it had been barely three years since the final result had entered the diplomatic sphere of the General Assembly. Given the importance of the topic, States should be given a reasonable opportunity to properly absorb the significance and scope of the draft articles. Mexico therefore considered it premature to seek to finalize the draft at the current session and agreed with other delegations that the topic should be revisited at another session in the not-too-distant future when it had had sufficient time to ripen. The possibility of adopting a treaty should not be rejected out of hand, because that would negate the unquestionable benefits of the normative force of written law, which was one of the basic goals of the codification and progressive development of international law.

18. **Mr. Nesi** (Italy) said that the draft articles on State responsibility for internationally wrongful acts were the outcome of a lengthy process in which several generations of jurists had participated. Among them he recalled, in addition to the Special Rapporteurs who had worked on the draft, Professor Ago and Professor Arangio-Ruiz.

19. On numerous occasions, Italy had expressed reservations on various aspects of the final draft, but it had nonetheless accepted the compromise solution adopted by the Commission in 2001. Those reservations had referred mainly to the following: deletion from the draft articles of a category of particularly serious wrongful acts, the so-called "international crimes", while maintaining the substance of the specific norm; the use of the concept of peremptory norms of general international law (*jus cogens*); the requirement that a breach be "serious" before it could qualify as a violation of an international obligation under article 40; the consequences of a serious breach of an obligation under peremptory norms of international law under article 41; and the implementation of State responsibility, i.e., compliance with the obligation of cessation and reparation by a State which had committed an international breach.

20. Italy joined other delegations in maintaining that an international convention was not the appropriate instrument for preserving the work of the Commission. The opening of a negotiating process whose results were unforeseeable could amount to a waste of resources and could also threaten the delicate compromises reached in the Commission.

21. International practice could contribute to the development of customary law in those areas where the draft articles were not to be considered as general international law. For that reason, Italy proposed that the General Assembly should task the Secretariat with preparing compilation of international practice in that area so that the Sixth Committee might consider, on the basis of practice and not before the sixty-third session, how the draft articles were perceived in international relations.

22. **Ms. Rivero** (Cuba) said that Cuba attached great importance to the topic of State responsibility for internationally wrongful acts in international law and considered that the draft articles constituted the basis for initiating negotiations which might lead to the adoption of a legally binding international instrument.

23. The topic of serious breaches of the obligations arising from peremptory norms of general international law was of great importance in protecting States

injured by wrongful acts committed by other States, which could include acts as serious for the international community as aggression and genocide. A clear definition of what was meant by "serious breaches" was required, for if it were stated that a "serious" breach implied the flagrant or systematic violation of an obligation without defining what was meant by "flagrant or systematic", that could give rise to differing interpretations.

24. Cuba maintained its reservations concerning countermeasures even though progress had been made in regulating them. Such measures were highly controversial and should be well regulated so that States would not use them indiscriminately. In the final analysis, they must be aimed at inducing States to fulfil their obligations. A step forward had been taken by limiting countermeasures, imposing restrictions on their implementation and prohibiting their implementation through recourse to the threat or use of force or the violation of humanitarian law or any other peremptory norm of general international law.

25. Her delegation was in agreement on article 52, which established the conditions relating to resort to countermeasures, mainly involving notification of the decision to take countermeasures and negotiation with the infringing State before taking countermeasures. The draft should include a prohibition of countermeasures involving economic and political constraints directed against the territorial integrity or political independence of a State. Likewise, the question of whether the infringing State was making efforts to settle a dispute in good faith should be taken into account.

26. The elimination of the clause on collective countermeasures was a positive development since it constituted a kind of legitimization of collective action. Nevertheless, she drew attention to the fact that article 54 provided States other than the injured State with the possibility of taking action against another State to secure the cessation of the violation.

27. The draft articles contained no dispute settlement provisions. As that was a very sensitive issue at the international level, it should be regulated. The draft should include references to the peaceful settlement of disputes on the basis of Article 33 of the Charter of the United Nations which held that international disputes should be settled by peaceful means so as not to endanger international peace and security.

28. Cuba was of the opinion that, as explained earlier, an ad hoc committee or a working group should be established to negotiate a convention on the item in order to provide States with the possibility of initiating negotiations that could result in the adoption of a universally accepted and legally binding instrument.

29. **The Chairman** said that the Committee had thus concluded its discussion of agenda item 139.

Agenda item 140: Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts (A/59/321 and A/C.6/59/L.13)

Draft resolution A/C.6/59/L.13

30. **Mr. Makarowski** (Sweden), introducing draft resolution A/C.6/59/L.13 on behalf of its 84 sponsors from all regional groups, proposed an oral revision in the sixth preambular paragraph of the English version. The words "the possibility that the International Fact-Finding Commission will facilitate" should be replaced by "the possibility for the International Fact-Finding Commission to facilitate". The speaker hoped that the change would be reflected in all official languages.

31. In 2004, a number of amendments had been made to the text of the draft resolution. For example, the preamble emphasized the importance of the International Fact-Finding Commission established in accordance with article 90 of Protocol I. Also, note was taken of the fiftieth anniversary of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, adopted at The Hague in 1954.

32. It was clear that humanitarian norms were being discussed in many forums throughout the world. A number of States and organizations had launched various initiatives to highlight the importance of such norms. In June 2000 the Asian-African Legal Consultative Organization had adopted the Seoul Declaration on the importance of humanitarian norms in contemporary armed conflicts. Activities to disseminate those norms were being conducted at various levels.

Agenda item 141: Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives *(continued)* (A/59/125 and Add.1 and A/C.6/59/L.14)

Draft resolution A/C.6/59/L.14

33. **The Chairman** informed the Committee that El Salvador had become a sponsor of draft resolution A/C.6/59/L.14.

34. *Draft resolution A/C.6/59/L.14 was adopted.*

35. **The Chairman** said that the Committee had thus concluded its discussion of agenda item 141.

Agenda item 160: Observer status for the Organisation of Eastern Caribbean States in the General Assembly *(continued)* (A/59/233 and A/C.6/59/L.7)

Draft resolution A/C.6/59/L.7

36. The Chairman informed the Committee that Trinidad and Tobago and the United Kingdom had become sponsors of draft resolution A/C.6/59/L.7.

37. *Draft resolution A/C.6/59/L.7 was adopted.*

38. **The Chairman** said that the Committee had thus concluded its discussion of agenda item 160.

Agenda item 143: Report of the United Nations Commission on International Trade Law on the work of its thirty-seventh session *(continued)* (A/59/17, A/C.6/59/L.11 and A/C.6/59/L.12)

Draft resolution, Report of the United Nations Commission on International Trade Law on the work of its thirty-seventh session (A/C.6/59/L.11)

39. **The Chairman** informed the Committee that Kenya and Tunisia had become sponsors of draft resolution A/C.6/59/L.11.

40. *Draft resolution A/C.6/59/L.11 was adopted.*

41. **Mr. Rosand** (United States of America), speaking in explanation of position, said that his delegation strongly supported the work of the United Nations Commission on International Trade Law (UNCITRAL) and the recommendation that the Secretary-General should publish the Legislative Guide on Insolvency Law, which would encourage economic growth and investment through the development of strong, effective and efficient insolvency regimes.

42. His delegation, while regretting that it was unable to be a sponsor of the draft resolution, did not agree with the statement in the draft resolution that the General Assembly should "approve" the Commission's conclusions that "the regulations on page limits such as those contained in the report of the Secretary-General (A/57/289) should not apply" to its documentation. The United States was firmly committed to supporting the Secretary-General's reform package, which included the imposition of page limits on United Nations reports. Furthermore, the Commission recalled that it was "fully conscious of the need to achieve economies whenever possible in the overall volume of documentation and would continue to bear such considerations in mind". In the light of that statement, the United States called upon the UNCITRAL secretariat to continue to make every effort to be as concise and economical as possible in the preparation of reports and to exclude any unnecessary or repetitious material.

43. **Mr. Arai** (Japan) said that his Government appreciated the contribution made by UNCITRAL in promoting the progressive harmonization and unification of international trade law. With regard to the imposition of page limits referred to in paragraph 9 of the draft resolution, Japan held that while the special characteristics of the mandate and work of the Commission must be given due consideration, the relevant paragraphs of previous General Assembly resolutions, such as section III, paragraph 2, of resolution 58/250, of 23 December 2003, should also be respected.

Draft resolution, Legislative Guide on Insolvency Law of the United Nations commission on International Trade Law (A/C.6/59/L.12)

44. **The Chairman** drew the attention of the members of the Committee to operative paragraph 1 of the French version of the draft resolution, in which "Conférence des Nations Unies sur le commerce et le développement" should read "Commission des Nations Unies pour le droit commercial international". He requested the Secretariat to correct the technical problems in the French text.

45. *Draft resolution A/C.6/58/L.12, as orally revised, was adopted.*

46. **The Chairman** said that the Committee had thus concluded its discussion of agenda item 143.

The meeting rose at 11.30 a.m.